

IN THE MATTER OF
THE SECURITIES ACT, 1988, SS 1988, c S-42.2

AND

IN THE MATTER OF

AAOPTION

AND

GALAXY INTERNATIONAL SOLUTIONS LTD.

AND

DAVID ESHEL

DECISION

Hearing held: April 22, 2016

Before: Gordon Hamilton (Chairperson), Mary Ann McFadyen, Paul Robinson (the "Panel")

Appearances: Brett Wawro, Investigator

Christina Meredith and Sonne Udembga for Staff, Securities Division

No appearances by AAOption, Galaxy International Solutions Ltd., David Eshel, or anyone on their behalf

Date of Decision: June 8, 2016

BACKGROUND:

1. In the Statement of Allegations by Staff of the Financial and Consumer Affairs Authority of Saskatchewan dated November 2, 2015, Staff alleged that AAOption, Galaxy International Solutions Ltd. and David Eshel (hereafter the Respondents or AAOption) "acted as dealers by engaging in the business of trading in securities or exchange contracts or holding themselves out

as engaging in the business of trading in securities or exchange contracts in Saskatchewan”, in violation of section 27(2) of *The Securities Act, 1988*.

PRELIMINARY MATTERS:

2. The only preliminary matter dealt with a question from the Panel concerning the proper service on the Respondents of the Notice of Hearing, given that neither the Respondents nor their agent were present. Counsel assured the Panel that proper notice had been given in accordance with the applicable rules of service in this instance.

EVIDENCE PRESENTED TO THE PANEL

3. Brett Wawro is an investigator who works in the Securities Division of the Financial and Consumer Affairs Authority. His testimony summarized his investigation into the business activities of the Respondents, and was clear, concise, consistent and credible. Given the absence of anyone representing the Respondents, there was no evidence presented to the contrary.
4. The evidence presented by Mr. Wawro included information provided to him by the Saskatchewan investor (the investor) who complained to the Securities Division. The investor approached Mr. Wawro after coming across information about a cease trade order involving trading in binary options.
5. The investor was exploring different means of earning income, when he noticed websites about binary options. He decided to invest through AAOptions after reading various on-line reviews which described the experiences of other investors with this company.
6. On April 20, 2015, the investor opened a trading account with AAOption by depositing \$500 USD in a trading account, by transferring funds from his credit card. In order to open an account, he was required to provide proof of his identity. He provided AAOptions with copies of his Visa card, a utility bill, passport and his Saskatchewan driver's licence.

7. Later that same day, Jonathon David, who identified himself as an executive account representative from AAOptions, contacted him by email, welcomed him as a new investor, and outlined the support services in the areas of webinar training and customized training programs. His account was verified the next day by an email from the AAOption Compliance Department.
8. The investor did not do well with his initial trades.
9. On April 22, 2015, the investor was approached by an individual who identified himself as James Patmore of AAOption, and was advised that if he increased his investment to \$10,000 USD, he could participate in hedge fund trading. The investor was provided with banking information and the beneficiary's address in Anguilla, British West Indies, so that he could wire the money to the company. He was also provided with a letter of guarantee. The beneficiary's name was Galaxy International Solution Ltd., but the bank's address was in Sofia, Bulgaria.
10. On April 22, 2015, the investor made attempts to contact the Anguilla Financial Services Commission (AFSC) by email. He inquired whether AAOption was a scam or legitimate. On April 23, 2015, he sent a second email to the AFSC requesting the same information.
11. AAOption representatives continued to keep in touch with the investor. They offered him access to auto-trading software, for an additional \$500 USD. On April 28, 2015, Victor Donovan, who identified himself as a senior VIP broker outlined the value of investing \$10,000 USD. He promised a return of "about 40% on a monthly basis" using his trading methodology. This representative indicated that there were different levels of accounts – "5K, 10K, 25K, 50K and Premium VIP".
12. Mr. Wawro testified that the investor later increased the amount in his investment account, topping it up to \$5,000 USD. He further testified that the investor reported that he became more successful once his larger account size entitled him to the services of an account manager to help him with his trades. The investor advised Mr. Wawro that he was given to understand that his trading account had grown to around \$12,000 USD.
13. After noticing an article in the Leader Post newspaper about a cease trade order in relation to binary options trading, the investor unsuccessfully attempted to withdraw money from his

trading account. He was provided with various reasons and justifications for the company's failure or refusal to return any money to him, all of which were explained by his account manager.

14. The investor contacted an investigator in the Securities Branch after he was unsuccessful in obtaining a return of any of his investment funds. In August 2015, he provided several emails to the Securities Branch that outlined his investment and trading activities with AAOption.
15. In the course of his investigation, Mr. Wawro uncovered a March 30, 2015 investor alert from the Anguilla Financial Services Commission (AFSC), which confirmed that Galaxy International Solutions Ltd. and AAOption are not regulated by the AFSC. Investors were directed to a registered company agent in Anguilla and to an AFSC bulletin outlining the risks associated with binary options and other "unregulated investment businesses".
16. The Panel was also provided with a Consumer Alert, dated June 26, 2015, from a well-known insurer, Lloyd's (commonly referred to as Lloyd's of London), who advised that AAOption had falsely published a statement indicating that AAOption is protected by Lloyd's. A review of the AAOption website, that had been captured in paper form on September 11, 2015, confirmed that this false statement involving Lloyd's was still on the AAOption website at that time.
17. The Panel was given a live presentation of the active AAOption website on the day of the hearing. The Panel recognized that the listed street address for AAOption / Galaxy International Solutions Ltd. in London, UK, was the same address that the Panel had seen in two other binary option hearing matters on which another panel had rendered decisions. On the 'contact us' page, there is a notation that AAOption "is a brand owned by Pacific Sunrise UK LTD located at 20 – 22 Wenlock Road, London, UK." This address is the same street address in London found on the websites for RTG Direct Trading Group Ltd./RTG Direct Trading Limited, and Zulutoys Limited/RBOptions. On February 19, 2016, another panel had determined that these binary option trading entities were in breach of *The Securities Act, 1988* (see *In the Matter of RTG Direct Trading Group Ltd. and RTG Direct Trading Limited; In the Matter of Zulutoys Limited and RBOptions*).

18. Mr. Wawro testified that neither Galaxy International Solutions Ltd. nor AAOOption are registered in Saskatchewan or anywhere in Canada. His investigation included a telephone discussion with a representative of the AFSC, who advised that Galaxy International Solutions Ltd. has been dissolved as a corporation in Anguilla, the jurisdiction in which it was incorporated.
19. The material submitted in evidence through Mr. Wawro identified David Eshel as an individual associated with Galaxy International Solutions Ltd. Mr. Eshel was listed as the administrator in a Whois Data search of the domain records for AAOOption's website, suggesting that the website was owned and operated by Eshel and/or Galaxy International Solutions Ltd.

ANALYSIS

20. As noted above, binary options trading has been the subject of two previous decisions by the Financial and Consumer Affairs Authority. In its February 19, 2016 decision, *In the Matter of RTG Direct Trading Group Ltd. and RTG Direct Trading Limited (RTG Direct)*, another panel examined the facts associated with binary options and the test set out by the Supreme Court of Canada in relation to what constitutes an investment contract.. In paragraph 19, the panel hearing the *RTG Direct* matter wrote:

In 1978, the Supreme Court of Canada considered what constitutes a security in its decision, *In the Matter of the Securities Act, R.S.O. 1970, Chapter 426 and Amendments thereto; And in the Matter of Pacific Coast Coin Exchange of Canada Limited*, [1978] 2 S.C.R. 112 (S.C.C.). In *Pacific Coast*, the Supreme Court identified the necessary components of an investment contract at paragraph 129. An investment contract must include:

- (i) the advancement of money by an investor,
- (ii) with an intention or expectation of profit,
- (iii) in a common enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those who solicit the capital or third parties, and
- (iv) where the efforts made by those other than the investors are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.

The *RTG Direct* panel concluded that binary options were securities by virtue of meeting the tests as set out by the Supreme Court for what constitutes an investment contract

21. Since these two decisions, there have been minor amendments to *The Securities Act, 1988*. On February 10, 2016, a statutory amendment was proclaimed, adding a definition of the term “derivatives” to the governing legislation and removing the term “exchange contracts”.
22. The Panel is mindful of the impact of the definition of derivatives, having previously noted the approach followed by the New Brunswick Financial and Consumer Services Commission. The New Brunswick approach recognized a binary option as a derivative in reliance upon the definition contained in its provincial legislation in its 2015 decision, *New Brunswick (Financial and Consumer Services Commission) v MHGG TechSolutions Ltd. et al.*, 2015 NBFCST 8.
23. As noted in the *RTG Direct* decision, the Supreme Court of Canada in *Pacific Coast* has set out four requirements in order to conclude that there is an investment contract in existence [see *In the Matter of the Securities Act, R.S.O. 1970, Chapter 426 and Amendments thereto; And in the Matter of Pacific Coast Coin Exchange of Canada Limited*, [1978] 2 S.C.R. 112 (S.C.C.), and paragraph 19 *supra*].
24. An evaluation of the facts presented to the Panel confirms that the Saskatchewan investor who became involved with AAOption had provided AAOption with a sum of money with an obvious intention to make a profit. The investor’s profit or loss was dependent upon how well he “invested”. His fortunes became interwoven with the assistance of an account executive from AAOption who advised him on which investments to make. In each case, any profit on his investment was dependent upon the efforts or the success of third parties.
25. On the basis of this analysis, the arrangements between the Saskatchewan investor and AAOption are clearly an investment contract, requiring AAOption to register with the Financial and Consumer Affairs Authority because the Respondents were engaging in the business of trading in securities.
26. What complicates this matter is the appearance that the binary option trading involving AAOption may not be a legitimate operation. The facts involving AAOption are consistent with facts reported in both the *RTG Direct* and its companion decision, *In the Matter of Zulutoys Limited and RBOptions (Zulutoys)*:
- a. a third party establishes a sophisticated on-line trading platform;

- b. the third party is usually located in a foreign country, where there are either weak enforcement agencies or no enforcement agencies, or the location is a country of convenience for various purposes;
- c. addresses in a more regulated country are either fictitious or common to multiple binary option companies;
- d. a significant amount of personal identity documentation is electronically requested by the binary option trader in order to open a trading account (which exposes the investor to the risk of identity theft);
- e. salespeople frequently encourage 'investors' to increase the amount of money placed with the third party on deposit, citing various reasons;
- f. requests for refunds of the initial investment and generated profits are generally unsuccessful.

27. The appropriate and only reasonable determination of this Panel, acting in its appointed role as a representative hearing panel for the Financial and Consumer Affairs Authority, is to confirm that the Respondents have failed to be properly registered and is therefore in breach of *The Securities Act, 1988*.

28. It is unclear why the Respondents, like other binary option platforms, failed to seek registration. It was not lost on the Panel that the failure to register enables the perpetuation of various on-line claims that binary options trading in Saskatchewan (and elsewhere in Canada) is not illegal, but simply not regulated. Such false statements are consistent with the advice concerning the unbelievable profits or returns available to binary option investors, such as the 40% returns promised to the Saskatchewan investor by a representative of AAOption. Like the facts in *RTG Direct*, this Saskatchewan investor was unable to obtain the return of his investment funds or the return on his investments (whether real or fictitious), after he transferred monies to his investment account with AAOption.

29. The Panel has considered the submissions from counsel regarding appropriate sanctions to be applied to this matter. The facts involving AAOptions are equally as reprehensible as the facts set out in previous binary option hearings and the panel has concluded that the prohibitions in this matter should be similar. The respondents should be permanently banned from the

securities industry in Saskatchewan, pay a significant administrative penalty, reimburse any investors for the losses they have suffered and pay the costs that FCAA has incurred because of the wrongful acts of the respondents. It is troubling that AAOption, Galaxy International Solutions LTD. and David Eshel share common tactics and a common address with the companies that were the subject of two other hearings, *RTG Direct* and *Zulutoys*.

30. In evaluating the appropriate considerations in assessing sanctions, the Panel was directed to the criteria set out in a previous decision of the Saskatchewan Financial Services Commission, the predecessor to the Financial and Consumer Affairs Authority. This Panel adopts those criteria as a whole, as recited at pages 2-3 of the October 31, 2000 decision, *In the Matter of The Securities Act, 1988 and in the Matter of Darcy Lee Bergen (Bergen)*. In *Bergen*, the hearing panel adopted a non-exhaustive list of factors that would influence the imposition of sanctions on a respondent:

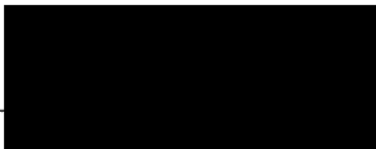
- the seriousness of the respondent's conduct;
- the harm suffered by investors as a result of the respondent's conduct;
- the damage done to the integrity of the capital markets in the province by the respondent's conduct;
- the extent to which the respondent was enriched;
- factors that mitigate the 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 the province;
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or advisor to investors;
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to capital markets;
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct; and
- orders made by the Commission in similar circumstances in the past.

31. In particular, the Panel finds that the same administrative penalty assessed in *RTG Direct* and *Zulutoys* should be assessed in this matter involving AAOption, in reliance upon the last criteria proposed in *Bergen*, namely that the Panel should attempt to promote consistency by considering orders made by other panels in similar circumstances in the past.

32. Accordingly, the Panel will issue its consequential Order in due course, that reflects the following determinations on sanctions in a manner consistent with the public interest:

- a) Pursuant to subsection 134(1)(a) of the Act, all of the exemptions in Saskatchewan securities law do not apply to the Respondents, permanently;
- b) Pursuant to subsection 134(1)(d) of the Act, the Respondents shall cease trading in any securities, including derivatives, in Saskatchewan, permanently;
- c) Pursuant to subsection 134(1)(d.1) of the Act, the Respondents shall cease acquiring securities, including derivatives, for and on behalf of residents of Saskatchewan, permanently;
- d) Pursuant to subsection 134(1)(e) of the Act, the Respondents shall cease giving advice respecting securities, including derivatives, for and on behalf of residents of Saskatchewan, permanently.
- e) Pursuant to section 135.1 of the Act, the Respondents shall pay an administrative penalty to the Financial and Consumer Affairs Authority of Saskatchewan in the amount of \$25,000;
- f) Pursuant to section 135.6 of the Act, the Respondents shall pay compensation to each person or company found to have sustained financial loss as a result, in whole or in part, of the Respondents' contraventions of the Act, in an amount to be determined; and
- g) Pursuant to section 161(1) of the Act, the Respondents shall pay the costs of or relating to the hearing in this matter.

33. This is a unanimous decision of the Panel.


Gordon Hamilton, Hearing Panel Chairperson


Mary Ann McFadyen, Hearing Panel Member


Paul Robinson, Hearing Panel Member