

ALBERTA SECURITIES COMMISSION

Docket: ENF-011765

Citation: Re Ghani, 2022 ABASC 11

Date: 20220201

NOTICE OF HEARING

To: Ali Ghani, Summerside Development Trust, Summerside Commercial Trust, Prism Summerside Limited Partnership, Prism Summerside Development Corp., and Prism Real Estate Investment Corporation

Notice: The Alberta Securities Commission (the **Commission**) will convene at Appearance 9:00 a.m. on Wednesday, March 23, 2022, 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 S.W., Calgary, Alberta.

Procedure:

1. You may obtain disclosure and particulars of the allegations in this Notice from Tom McCartney, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.355.4480, email: tom.mccartney@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), 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. Ali Ghani (**Ghani**) is an individual who resided in Calgary, Alberta during some or all of the period from January 2013 to April 2018 (the **Relevant Time**).
2. The other respondents are entities comprising a complex structure set up to flow investment funds through two trusts and a limited partnership for a commercial real estate development.
3. The Summerside Development Trust (**Development Trust**) was created January 4, 2013, and maintained its registered office in Calgary. Ghani and his father, Abdul Ghani (**Ghani Sr.**), were the trustees of the Development Trust during some or all of the Relevant Time. Ghani Sr. is now deceased.
4. The Summerside Commercial Trust (**Commercial Trust**) was created January 4, 2013, and maintained its registered office in Calgary. Ghani Sr. was the trustee of the Commercial Trust during some or all of the Relevant Time.
5. Prism Summerside Development Corp. (**Development Corporation**) was the General Partner of the Prism Summerside Limited Partnership (**Limited Partnership**). It was an Alberta company with a registered office in Calgary. Ghani and Ghani Sr. were the directors of the Development Corporation during the Relevant Time.
6. The Limited Partnership was created December 13, 2012, and maintained its principal office in Calgary.
7. Prism Real Estate Investment Corporation (**PREIC**) is an Alberta company with a registered office in Calgary. Ghani was a director of PREIC during the Relevant Time.
8. During the Relevant Time, Ghani was the guiding mind of each trust, partnership and corporation named as Respondents in these proceedings.

Circumstances

9. The Prism Group of Companies (**Prism**) consisted of several entities involved in raising funds and developing real estate projects in Alberta. Prism's office was located in Calgary. Ghani and Ghani Sr. were the founders of Prism.

10. One of Prism's real estate projects was the development of a strip mall in the Summerside neighbourhood in Edmonton (**Summerside Project**).
11. The Development Trust issued an offering memorandum dated January 5, 2013 (**Offering Memorandum**), and offered trust units to investors (**Development Trust Units**).
12. Each of the Development Trust Units is a security within the meaning of section 1(ggg)(v) or section 1(ggg)(viii) of the *Act*.
13. The Respondents represented to investors that:
 - 13.1 the Development Trust would use funds raised from investors to acquire trust units in the Commercial Trust;
 - 13.2 the Commercial Trust would use funds raised from the issuance of trust units to the Development Trust to purchase Class "A" Limited Partnership units in the Limited Partnership; and
 - 13.3 the long-term objective of the Development Trust was to provide funding for the Limited Partnership to develop the Summerside Project, which would ultimately provide income for distribution to investors in the form of rent paid by commercial tenants and proceeds from a potential sale of the Summerside Project.
14. The Respondents represented to investors that once there was distributable cash from the development and sale of Summerside, other than debt obligations that had to be satisfied, the proceeds would be distributed as follows:
 - 14.1 first, to pay the expenses of the Development Corporation;
 - 14.2 second, the repayment of capital invested by holders of Limited Partnership units; and
 - 14.3 third, provided that the distributable cash remaining would result in the holders of Development Trust Units earning a return of more than 10 per cent per annum, the balance of distributable cash would be split, 70 per cent to the holders of Limited Partnership Units and 30 per cent to the Development Corporation.
15. Between August 30, 2013 and May 7, 2014, approximately \$4.25 million was raised through the sale of Development Trust Units to approximately 207 investors, of whom more than half were Alberta residents.
16. The Summerside Project was completed, leased to tenants and sold on December 12, 2017, for approximately \$22 million. Of that approximately \$22 million, the Respondents received approximately \$4.1 million in net sale proceeds (**Sale Proceeds**).

Fraudulent Course of Conduct

17. The investors in the Development Trust were not repaid their invested capital or any returns.
18. The Respondents misappropriated approximately \$2.6 million of the Sale Proceeds for the benefit of Ghani, his family and entities controlled by him. In particular, the Respondents made the following unauthorized uses of funds:
 - 18.1 the repayment or satisfaction of debts unrelated to the Summerside Project;
 - 18.2 the payment of debts related to businesses controlled by Ghani and his family;
 - 18.3 the payment of construction costs and other expenses unrelated to the Summerside Project;
 - 18.4 the purchase of equipment for businesses unrelated to the Summerside Project;
 - 18.5 the purchase of at least three vehicles;
 - 18.6 the payment of rent to landlords unrelated to the Summerside Project;
 - 18.7 the payment of funds to entities under Ghani's direction and control; and
 - 18.8 the payment of funds to, or on behalf of, entities that are not related to the Summerside Project and in which Ghani has or had an interest.

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

Investors' Pecuniary Interest at Risk

19. By carrying out the Prohibited Acts, the Respondents put investors' pecuniary interests at risk as follows:
 - 19.1 the Respondents used the Sale Proceeds for purposes that were contrary to the representations the Respondents made to those investors about how the Sale Proceeds would be used; and
 - 19.2 the Respondents either put investors at risk of losing funds or caused investors to lose funds.

The Respondents had Knowledge of the Fraud and Deprivation

20. Ghani, by engaging in the Prohibited Acts, had knowledge of the Prohibited Acts.
21. In carrying out the Prohibited Acts, Ghani knew or reasonably ought to have known that engaging in the Prohibited Acts could result in investors losing their money or investors' pecuniary interests being put at risk.

22. Through their guiding mind, Ghani, each of the Development Trust, Commercial Trust, Development Corporation, Limited Partnership and PREIC had knowledge of the Prohibited Acts and knew or reasonably ought to have known that engaging in the Prohibited Acts could result in investors losing their money or investors' pecuniary interests being put at risk.
23. Ghani authorized, permitted or acquiesced in the misconduct of the Development Trust, Commercial Trust, Development Corporation, Limited Partnership and PREIC described in this Notice of Hearing.

Breaches

24. As a result of the above, Staff allege that 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 Development Trust investors.

Calgary, Alberta, 1st February, 2022.

) ALBERTA SECURITIES COMMISSION

)

)

) *“Original signed by”*

) _____
David C. Linder, Q.C.

) Executive Director