

IN THE MATTER OF
THE *SECURITIES ACT*, RSNS 1989, C 418, AS AMENDED (THE ACT)

-AND-

IN THE MATTER OF
FOREXTIPS101 LTD. A.K.A. (OR CARRYING ON BUSINESS AS) FUNDING TALENT,
AND JESSICA LYNN GHANEY A.K.A. JESSICA L. CHANEY, AND ANTHONY CARLO
SARTOR (THE RESPONDENTS)

-AND-

IN THE MATTER OF
THE APPLICATION OF THE DIRECTOR OF ENFORCEMENT FOR THE NOVA
SCOTIA SECURITIES COMMISSION UNDER SECTION 134 OF THE ACT

-AND-

IN THE MATTER OF THE APPLICATION OF THE RESPONDENTS UNDER
SUBSECTION 29C(7) OF THE ACT

Decision and Order
(Sections 29C and 134 of the Act
and Section 17.3 of Rule 15-501)

Hearing: March 23, 2021
Decision: March 26, 2021
Panel: Shirley P. Lee, Q.C.
Counsel: Jennie Pick on behalf of the Director of Enforcement
Jane O'Neill, Q.C. on behalf of the Respondents
Basia Dzierzanowska on behalf of the Respondents

I. BACKGROUND

1. A hearing (the Hearing) was held before the Nova Scotia Securities Commission (the Commission) on March 23, 2021, to consider the following:
 - a. a hearing and review, pursuant to subsections 134(5) and 6(3) of the Act, of the Commission's decision to issue a Temporary Order dated March 10, 2021 (the Temporary Order) pursuant to an *ex parte* application on behalf of the Director of Enforcement (the Director) of the Commission dated March 5, 2021 (the Ex Parte Application);

- b. an application on behalf of the Director, pursuant to subsection 134(3) of the Act, to extend the Temporary Order; and
 - c. an application by the Respondents, pursuant to subsection 29C(7) of the Act, to revoke the Freeze Direction and Order to Registrar of Deeds dated March 10, 2021 (the Freeze Direction) issued by the Commission upon consideration of the Ex Parte Application.
2. The Hearing relates to certain programs offered by ForexTips101 Ltd. (the Company) on a website (the Website) operated by the Respondents.
3. The Company was incorporated under the *Canada Business Corporations Act* and is registered to carry on business in Nova Scotia.
4. The Company has a registered office in Halifax, Nova Scotia. Jessica Lynn Ghaney (Ghaney) and Anthony Carlo Sartor, the Company's directors and officers, are resident in Nova Scotia.
5. According to the Website:
 - a. an interested individual can choose from three programs with several account options (each an Account);
 - b. an Account holder (a Member) pays a subscription fee and monthly fees;
 - c. a Member is first given access to a demo account which is a simulated account to trade the amount of money they have chosen;
 - d. a bi-weekly talent bonus is paid to the Member based on a percentage of the profits made by trading on the demo account;
 - e. upon certain conditions being met, the Member may be given access to a real account, also referred to as a live account or a funded earnings account, based on the profits made trading in the demo account;
 - f. profits made trading on the real account are available to be withdrawn by the Member less 25% which is kept by the Company; and
 - g. Members are permitted to trade forex pairs, indices, metals, and cryptocurrency through one of the brokers named on the Website.
6. The Temporary Order was issued based on the information on the Website.
7. Counsel for the Director and for the Respondents provided written submissions prior to the Hearing. The Respondent's written submissions were accompanied by an Affidavit of Ghaney affirmed on March 19, 2021 (the Ghaney Affidavit).

8. In the Ghaney Affidavit, Ghaney represented that:
- a. the Company is an online pay-to-play learning platform for Members who want to play and learn about retail investing;
 - b. none of the Accounts contain real dollars and no funds are ever deposited or withdrawn from the Accounts;
 - c. Members who play within the Rules set by the Company and generate fictitious profits are paid a "Talent Bonus" which is paid from revenue generated through subscription fees;
 - d. the real accounts do not contain real dollars. They are also simulated accounts and there is no real trading conducted in these accounts;
 - e. Members using any type of account are never in the real market;
 - f. Members are never provided with real money in which to trade and all trades are conducted on demo accounts offered by brokerages that the Company has chosen;
 - g. for a subscription fee, a Member has access to what is akin to "monopoly money" to trade with on a simulated market; and
 - h. there is no "profit sharing" of any proceeds from any real world trades. A member can earn credits and take a portion of those credits out as cash which is funded through subscription fees collected from other Members.

II. SUBMISSIONS

9. The Director submitted that the Respondents, in offering the Accounts, are engaged in unregistered activity in Nova Scotia by trading in and distributing securities (evidence of indebtedness, investment contract, profit sharing agreement) and derivatives contrary to the registration requirement in section 31 of the Act and the prospectus requirement in section 58 of the Act.
10. The Director submitted that the Account offerings and each Account is a derivative as defined in clause 2(1)(ja) of the Act since:
- a. an Account is a financial contract between a Member and the Company;
 - b. payment obligations under the Account consist of the bi-weekly talent bonus and the payment obligation associated with a percentage of the profits earned trading in the real account; and

- c. the payment obligations are derived from, referenced to, and based on, a Member's profit margin from trading and from the movement of values of the interests being traded as per the market data used by the Respondents.
11. The Director submitted that the Respondents' activities are ongoing and that an extension of the Temporary Order is necessary and required in the public interest while enforcement staff complete their investigation.
12. The Director submitted that the Respondents' activities also raise a *prima facie* case of misrepresentation and fraud contrary to subsection 50(2) of the Act and section 132A of the Act, respectively, as grounds for extension of the Temporary Order and continuation of the Freeze Direction.
13. The Respondents submitted that the Company does not trade, issue, or otherwise deal with securities as the Company's business model does not fall under an evidence of indebtedness, create profit sharing agreements, or meet the criteria to be an investment contract.
14. The Respondents submitted that the Company's business does not constitute dealing in derivatives. Members pay subscription fees at a set rate on a monthly basis without an automatic monthly renewal option so there is no contract created that depends on the value of an underlying interest.
15. The Respondents submitted that since the Company does not deal with securities or derivatives, it cannot have contravened any provisions of the Act.
16. The Respondents submitted that the Director has not demonstrated a strong *prima facie* case that the Respondents have contravened securities laws so it cannot be considered "expedient for the due administration of Nova Scotia securities laws" to keep the Freeze Direction in place and it should be immediately revoked.

III. DECISION

17. After considering the Ex Parte Application and all of the documents filed for the Hearing, and the oral and written submissions of both parties, I found that:
 - a. the Temporary Order was issued based on *prima facie* evidence before the Commission to form a well-founded suspicion of a breach of sections 31 and 58 of the Act with respect to trading in securities and derivatives;
 - b. at the time the Temporary Order was issued, the Commission did not have the information contained in the Ghaney Affidavit which materially alters the disclosure relating to the Accounts found on the Website;
 - c. there was no *prima facie* evidence of a security; and

- d. although the Accounts have characteristics very similar to those of a derivative, they were not a type of financial contract caught by the definition of a derivative in the Act.
18. At the Hearing, I emphasized that my decision was solely for the purposes of the matters considered at the Hearing and was not a final determination that the Accounts could not be caught by securities legislation.
19. Based on my finding that there was no *prima facie* evidence of a security or a derivative, it was not necessary nor in the public interest to confirm or extend the Temporary Order which expired on March 25, 2021.
20. This will confirm my decision at the Hearing that the extension application filed by the Director be dismissed.
21. Based on my decision relating to the extension of the Temporary Order, I determined that the Freeze Direction would be revoked as it was no longer required for the due administration of securities or derivatives laws in Nova Scotia.
22. As a final matter, I determined that redacted copies of Lianne Bradshaw's affidavit sworn on March 5, 2021 (the Bradshaw Affidavit), which was filed in support of the Ex Parte Application, and the Freeze Direction be placed on the public record for the Hearing.

AND UPON being satisfied that it is not prejudicial to the public interest to do so;

IT IS ORDERED:

1. pursuant to subsection 29C(7) of the Act that the Freeze Direction is hereby revoked; and
2. pursuant to section 17.3 of Rule 15-501 *General Rules of Practice and Procedure* that redacted copies of the Bradshaw Affidavit and the Freeze Direction be placed on the public record and that the unredacted copies of the Bradshaw Affidavit and the Freeze Direction be held in confidence.

DATED at Halifax, Nova Scotia, this 26th day of March, 2021.

NOVA SCOTIA SECURITIES COMMISSION

(signed) "Shirley P. Lee"

Shirley P. Lee, Q.C., Vice-Chair