

ALBERTA SECURITIES COMMISSION

Citation: Re Major, 2016 ABASC 226

Docket: ENF-009712

Date: 20160803

**SETTLEMENT AGREEMENT
AND UNDERTAKING**

Robert Jay Major, Gary Mattison Clements, and 1429250 Alberta Ltd.

Agreed Facts

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into Robert Jay Major (**Major**), Gary Mattison Clements (**Clements**), and 1429250 Alberta Ltd. (**142 Alberta**) (collectively, **Respondents**) to determine if Alberta securities laws had been breached.
2. The investigation confirmed, and the Respondents admit, that they breached those sections of the *Securities Act*, R.S.A. 2000, c. S-4, as amended, (**Act**), referred to in this Settlement Agreement and Undertaking (**Agreement**), and that they acted contrary to the public interest.
3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraphs 25-27 below and for no other use or purpose, the Respondents agree to the facts and consequences set out in this Agreement.
4. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.

Parties

5. Major is an individual and resident of Grande Prairie, Alberta. At all material times he was a director and officer of Discovery Bay Games, Inc. (**DBG**), Discovery Bay Games Alberta, Inc. (**DBG-AB**), and 142 Alberta.
6. Clements is an individual and resident of Grande Prairie, Alberta. At all material times he was a director of DBG-AB.

7. 142 Alberta is an Alberta corporation, carrying on business under the name Major Investments. Through 142 Alberta, Major conducted some or all of the fundraising described below.
8. DBG was an Alberta corporation. It is now struck.
9. DBG-AB was an Alberta corporation, created to raise RRSP funds for DBG. It is now dissolved.

Circumstances

10. DBG owned and published a portfolio of games and puzzles.
11. From 2009 to 2011, the Respondents raised at least \$12 million from the sale of various DBG and DBG-AB securities (**Securities**) to at least 100 Alberta investors.
12. None of the Respondents, DBG, or DBG-AB were registered with the Executive Director of the Commission (**Executive Director**) at any time in any capacity.
13. The sales of the Securities were trades, as defined in the *Act*. Further, as first trades in securities which had not been previously issued, the sales of the Securities were also distributions under the *Act*.
14. Some or all of the Respondents made statements to Alberta investors which failed to state a fact or facts necessary to make the statements not misleading by failing to adequately set out the risk associated with the investments and failing to set out the commissions paid. These omissions would reasonably be expected to have a significant effect on the market price or value of the Securities.
15. Major, with the intention of effecting a trade in the Securities and without the written permission of the Executive Director, represented to an investor or investors that DBG may be going public.

Admitted Breaches of Alberta securities laws (Admitted Breaches)

16. Based on the Agreed Facts, the Respondents admit they:
 - 16.1 breached s. 75(1) of the *Act* by:
 - 16.1.1 trading and dealing in the Securities without registration; and
 - 16.1.2 acting as advisers without registration;
 - 16.2 breached s. 110(1) of the *Act* by distributing the Securities without filing a preliminary prospectus or prospectus with the Executive Director and obtaining a receipt therefor; and

16.3 breached s. 92(4.1) of the *Act* by making statements to Alberta investors which failed to state a fact or facts necessary to make the statements not misleading, as further detailed above.

17. Based on the Agreed Facts, Major further admits he breached s. 92(3)(b)(i) of the *Act* by representing to an investor or investors that DBG may be going public, with the intention of effecting a trade in the Securities and without the written permission of the Executive Director.

Circumstances Relevant to Settlement

18. The Respondents have not been previously sanctioned by the Commission.

19. The Respondents cooperated with Staff during the investigation.

20. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

21. DBG was a legitimate enterprise that produced viable products.

22. Major and Clements lacked significant experience in the capital markets.

23. Clements invested a significant sum of his own and his wife's funds in DBG and DBG-AB, all of which have been lost.

24. Major and Clements have indicated remorse for their involvement in the events described herein.

Settlement and Undertakings

25. Based on the Agreed Facts and Admitted Breaches, Major agrees and undertakes to the Executive Director to:

25.1 pay to the Commission the amount of \$135,000, representing \$115,000 for settlement and \$20,000 for investigation and legal costs incurred by Staff;

25.2 resign all positions he may have as a director or officer of any issuer that relies on any exemptions contained in Alberta securities laws or that distributes securities to the public; and

25.3 refrain for a period of 15 years from the date of this Agreement from:

25.3.1 becoming or acting as a director or officer, or both, of any issuer that relies on any exemptions contained in Alberta securities laws or that distributes securities to the public;

25.3.2 trading in or purchasing any securities or derivatives except trades that are made through a registrant who has first been given a copy of this Agreement;

- 25.3.3 relying on any or all of the exemptions contained in Alberta securities laws;
- 25.3.4 engaging in any investor relations activities;
- 25.3.5 advising in securities or derivatives;
- 25.3.6 becoming or acting as a registrant, investment fund manager or promoter; and
- 25.3.7 acting in a management or consultative capacity in connection with activities in the securities market.

26. Based on the Agreed Facts and Admitted Breaches, Clements agrees and undertakes to the Executive Director to:

- 26.1 pay to the Commission the amount of \$30,000, representing \$25,000 for settlement and \$5,000 for investigation and legal costs incurred by Staff;
- 26.2 resign all positions he may have as a director or officer of any issuer that relies on any exemptions contained in Alberta securities laws or that distributes securities to the public; and
- 26.3 refrain for a period of seven (7) years from the date of this Agreement from:
 - 26.3.1 becoming or acting as a director or officer, or both, of any issuer that relies on any exemptions contained in Alberta securities laws or that distributes securities to the public;
 - 26.3.2 trading in or purchasing any securities or derivatives except trades that are made through a registrant who has first been given a copy of this Agreement
 - 26.3.3 relying on any or all of the exemptions contained in Alberta securities laws;
 - 26.3.4 engaging in any investor relations activities;
 - 26.3.5 advising in securities or derivatives;
 - 26.3.6 becoming or acting as a registrant, investment fund manager or promoter; and
 - 26.3.7 acting in a management or consultative capacity in connection with activities in the securities market.

27. Based on the Agreed Facts and Admitted Breaches, 142 Alberta agrees and undertakes to the Executive Director to refrain for a period of 15 years from trading in or purchasing any securities or derivatives.

Administration

28. The Respondents acknowledge that they received independent legal advice and have voluntarily made the admissions and undertakings in this Agreement.

29. The Respondents waive any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.

30. The Respondents acknowledge and agree that the Commission may enforce this Agreement in the Court of Queen’s Bench or in any other court of competent jurisdiction.

31. The Respondents understand and acknowledge that this Agreement may form the basis for securities-related orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow for provisions of a settlement agreement made in this matter to be given parallel effect in those other jurisdictions automatically, without further notice to the Respondents. The Respondents understand and acknowledge that they should contact the securities regulator of any other jurisdiction in which they may intend to engage in any securities-related activities.

32. Execution and fulfillment of the terms of this Agreement by the Respondents resolve all issues involving the Respondents relating to the conduct described above, and Staff will take no further steps against the Respondents arising from these facts.

33. This Agreement may be executed in counterpart.

Signed by ROBERT JAY MAJOR at)	
Grande Prairie, Alberta this)	
28 day of July 2016, in the presence of:)	
)	
<u>Donna Altermatt</u>)	
WITNESS NAME)	
)	
<u>“Original Signed By”</u>)	<u>“Original Signed By”</u>
SIGNATURE)	Robert Jay Major
)	

Signed by GARY MATTISON)
CLEMENTS at Grande Prairie,)
Alberta this 28 day of July 2016,)
in the presence of:)

Donna Altermatt)
WITNESS NAME)

) “Original Signed By”
) Gary Mattison Clements
) “Original Signed By”
) SIGNATURE)

Signed by the duly authorized signatory)
of 1429250 ALBERTA LTD. at Grande)
Prairie, Alberta, this) 1429250 ALBERTA LTD.
28 day of July 2016, in the)
presence of:)

Donna Altermatt)
WITNESS NAME)

) Per: “Original Signed By”
) Robert Jay Major
) “Original Signed By”
) SIGNATURE)

) ALBERTA SECURITIES COMMISSION
)

Calgary, Alberta, 3 August 2016)

) “Original Signed By”
) Cynthia J. Campbell,
) Director, Enforcement
)
) on behalf of
)
) David C. Linder, Q.C.
) Executive Director