

May 11, 2016

TO: Brenda Leong - Chair  
British Columbia Securities Commission  
PO Box 10142 (Pacific Centre)  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1L2

FROM: Rod Wharram / West Karma Ltd., Deercrest Construction Fund Inc., Falls Capital Corp.



(the "Respondents in BCSC Action")

SENT VIA EMAIL TO: [bleong@bcsc.bc.ca](mailto:bleong@bcsc.bc.ca)

**RE: SETTLEMENT OFFER NOT PRESENTED TO THE EXECUTIVE DIRECTOR**

Dear Ms. Leong,

1. As you are aware, from September 2010 through December 2015, the Respondents had a matter present itself with the *British Columbia Securities Commission* ("BCSC"). On November 25, 2015, a Panel (consisting of Nigel Cave, Don Rowlatt, Judith Downes, and George C. Glover) issued their Decision (2015 BCSECCOM 422). The Executive Director was represented by *C. Paige Leggat* ("Leggat") and then *Olubode Fagbamiye* ("Fagbamiye") after Leggat resigned in the middle of the matter.
2. The hearing lasted a full 10-days from April 7, 2014 – November 21, 2014 which costs many thousands of dollars to administer, including the cost of the Litigators time, the cost of the Commissionaires, court reporters, etc.
3. During the Spring of 2013, the Respondent Wharram (via a newly formed numbered company) was in the midst of developing a 44-unit real estate complex in Chilliwack. Even though that company was NOT an Issuer, he was told he had to resign Directorship of that company because of the BCSC order to which he reluctantly complied. Resigning from this company in turn has cost Wharram hundreds of thousands of dollars.
4. Wharram relinquished control of the company to Willem and Leonard Kerkhoff (the Directors of Kerkhoff Construction), a well-established developer based in Chilliwack. They understood the dramatic effect the BCSC action had against the Respondents and the over 250 investors that were involved in the Respondents companies.
5. As a sign of good faith, as well as a request from Wharram, the Kerkhoffs' agreed to allow the former investors in both Falls Capital Corp and Deercrest Construction Fund Inc. to participate as non-voting shareholders in the project. They were to be issued shares in the company –

again, a company that had nothing to do with the investigation of the BCSC. This was Wharram's attempt at trying to ensure the investors received some money back against the amount that was placed into the failed projects they originally invested into.

## SETTLEMENT REQUEST IGNORED BY BCSC

6. On November 7, 2013, Wharram sent the details of the possible transaction in an email that was called a Settlement Agreement (see attached) to Staff Litigator Leggat. As you clearly see, among other things, it proposed the former investors participate in a solid, valid real estate project with NO involvement from Wharram or the Corporate Respondents.
7. Only on December 30, 2013 – some 7 weeks later - did I finally get a response from Leggat (see attached). Unfortunately, Leggat did not indicate she even took the Settlement Offer to the Executive Director. In fact, she indicates:

*"The Executive Director has that authority, and we will not seek his approval of the settlement terms unless you indicate that you and the Corporate Respondents (as defined in the Notice of Hearing) agree to the terms.*

-Email from Paige Leggat of the BCSC, dated December 30, 2013

8. This was definitely not the response the Respondents thought they would receive – considering what was at stake for the investors – and considering the mandate of the BCSC taken directly off of your website:

*Our Mission is to protect and promote the public interest by fostering:*

- *A securities market that is fair and warrants public confidence;*
- *A dynamic and competitive securities industry that provides investment opportunities and access to capital.*

Source: The BCSC website

## What is the Relationship Between a Lawyer and the Executive Director and/or Chair of the BCSC?

9. The Respondents question the relationship between the Litigation Staff and the Executive Director and/or Chair of the BCSC. Would one be wrong in assuming they (like any other client/lawyer relationship) are bound together in this way? Is the Executive Director and/or the Chair of the Commission the client and the Litigation Staff are brought in to represent them in legal matters?
10. If this is the case, then I question – WHY DID THE LITIGATION STAFF (LAWYERS HIRED BY THE COMMISSION) NOT FORWARD ANY SETTLEMENT OFFER TO THEIR CLIENT? ARE THEY NOT BOUND BY THE CODE OF CONDUCT OF THE LAW SOCIETY OF BC WHERE IT STATES:

### **2.1 Canons of Legal Ethics ...**

#### **2.1-3 To the client ...**

(c) Whenever the dispute will admit of fair settlement **the client should be advised to avoid or to end the litigation...**

#### **Encouraging compromise or settlement**

**3.2-4** A lawyer **must advise** and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and **must discourage the client from commencing or continuing useless legal proceedings.**

Source: Code of Professional Conduct for BC, The Law Society of British Columbia website [Emphasis Added]

11. For the balance of 2013 and the 3 months leading up to the April hearing, Wharram tried repeatedly to negotiate a Settlement that would work for the former investors but was turned down over and over again by Staff – Wharram told her he did not want to go to a hearing and asked her the process of negotiating a settlement with the Executive Director. One of our emails exchanges (only days before the hearing) is as follows:

**From:** Paige Leggat [<mailto:pleggat@bcsc.bc.ca>]  
**Sent:** March-24-14 9:34 AM  
**To:** Rod Wharram; Colette Colter  
**Cc:** Olubode Fagbamiye  
**Subject:** RE: The Falls Capital Corp. and others - WITHOUT PREJUDICE

WITHOUT PREJUDICE

Mr. Wharram,

*Mr. Fagbamiye and I are the people with whom you negotiate a settlement as we have conduct of your file. We negotiate settlements by exchanging letters the way that we have been over the last couple of months. You have been negotiating settlement as legal counsel would. You have our letters setting out the terms of settlement which we would recommend to the Executive Director. If you would like to settle on those terms, tell me.*

*If you would like to talk to us about this, we can make ourselves available for a telephone call at 10:30 this morning, or sometime in the next few days if this morning is not convenient for you. My direct line is 604-899-6724. Would you like to speak at 10:30 this morning?*

Regards,

C. Paige Leggat  
Senior Litigation Counsel  
Enforcement Division  
British Columbia Securities Commission  
Tel: 604-899-6724  
[pleggat@bcsc.bc.ca](mailto:pleggat@bcsc.bc.ca)

**From:** Rod Wharram [<mailto:rod@westkarma.com>]  
**Sent:** Friday, March 21, 2014 2:51 PM  
**To:** Paige Leggat; Colette Colter  
**Cc:** Olubode Fagbamiye  
**Subject:** RE: The Falls Capital Corp. and others - WITHOUT PREJUDICE

-WITHOUT PREJUDICE-

Ms Leggat,

*With all due respect, I have sent in 2 previous settlement offers and they BCSC and have not had success with either of them.*

*Now, if I had legal counsel, they would have the ability to negotiate a settlement with the commission as I am told it happens on occasion. I am asking for an opportunity to negotiate a Settlement with someone at the commission who does not have a conflict talking to me and one who can freely discuss this matter with me. Who would this be? Can I contact the Executive Director directly? Even your comments, "we would recommend to the Executive Director" in this very email is concerning as it appears that if you do not think a valid settlement offer does not make threshold it is not even presented to the Executive Director – I find this alarming.*

*Again, I would like to freely discuss a settlement offer with the proper party at the Commission. Certainly, I have the right to do so – please tell me if this is not accurate.*

Regards,

Rod Wharram

**From:** Paige Leggat [<mailto:pleggat@bcsc.bc.ca>]  
**Sent:** March-21-14 1:51 PM  
**To:** Rod Wharram; Colette Colter

**Cc:** Olubode Fagbamiye

**Subject:** RE: The Falls Capital Corp. and others - WITHOUT PREJUDICE

WITHOUT PREJUDICE

Mr. Wharram,

You are welcome to send in another settlement offer if you would like to. You have Mr. Fagbamiye's letter of March 19, 2014 which refers you to the terms we would recommend to the Executive Director. If you have settlement-oriented matters you would like to bring to our attention, I suggest you set them out in a letter to us. We can then get in touch with you in response to your letter.

Regards,

C. Paige Leggat  
Senior Litigation Counsel  
Enforcement Division  
British Columbia Securities Commission  
Tel: 604-899-6724  
[pleggat@bcsc.bc.ca](mailto:pleggat@bcsc.bc.ca)

**From:** Rod Wharram [<mailto:rod@westkarma.com>]

**Sent:** Friday, March 21, 2014 12:25 PM

**To:** Colette Colter

**Cc:** Olubode Fagbamiye; Paige Leggat

**Subject:** RE: The Falls Capital Corp. and others - WITHOUT PREJUDICE

-WITHOUT PREJUDICE-

Ms. Leggat,

Are we able to have a formal meeting (as early as Monday March 24, 2014) to discuss an opportunity to bring another Settlement Offer to you.

I am thinking if we were able to spend 15 -20 minutes discussing my matter, we might be able to put something together that would work for both sides. If we are not able to do so (because you are council), can you please tell me who I can contact at the BCSC to organize this meeting?

I look forward to your prompt response.

Regards,

Rod Wharram

12. Wharram is repeatedly trying to avoid a costly, lengthy hearing but is almost being extorted by your Staff to pay nearly \$6 million dollars when he did not abscond with that amount of money. Wharram was forced to go to a hearing because the allegations were nowhere near the facts presented by both sides during the hearing. It is clear the Executive Director has the ability to accuse a Respondent of virtually anything and the onus goes to the Respondents to prove he did not do as alleged! This is backwards – the onus is on any Plaintiff to prove the Defendant committed the allegations outlined in the Notice of Hearing. There is case law after case law indicating the onus is on the Commission to prove their case – but this is not what happened in this matter. The Executive Director threw a bunch of bogus allegations (that were not properly investigated), then you issued a Freeze Order and I was not able to hire legal assistance.
13. How is a lawyer (whom only works for the BCSC) the person that decides whether or not a threshold is met with respect to a Respondents settlement offer? There's too much at stake here for Leggat to be the person who decides what the Executive Director will accept or not.

The former investors had an opportunity to make a large portion of money in the project and Leggat is the one who arbitrarily decides their fate? This is fundamentally wrong on many levels and we want to know why this is the case at the BCSC.

14. The former investors stood to make money if they were able to participate in the real estate project. The frustrating thing is that NOBODY at the BCSC would even consider the notion and only wanted a \$5.8 million ransom. When told of the events and correspondence from the BCSC, one of the investors (among many others) sent an email where he stated:

*From: Matthew Mignault*  
*Sent: March-25-15 10:04 AM*  
*To: Rod Wharram*  
*Subject: RE: Update Letter - March 4, 2013 - Falls Capital Corp*

*Rod, thank you for responding to my email.*

*This is all a little confusing, but the one point I would like to make is that if there is a legitimate proposal or plan that could result in some kind of recovery for investors, then I would like to think the BCSC would seriously examine it, and if warranted, put their full support behind it. The BCSC is there to protect investors' interests and hopefully this would amongst their top priorities.*

*Regards,*

*Matthew Mignault*

15. Mr. Mignault's words are powerful – the BCSC did not examine the settlement offer and they certainly did not protect the investors' interests. Facts are this was NOT a priority for anyone at the Commission – only bringing a great big multi-million fraud allegation based on a very sub-par investigation and assumptions. Your investigators should be ashamed of themselves and the Staff Litigators (whom resorted to manipulating evidence to suit their theory of the case) should be professionally sanctioned by the Law Society of BC.
16. Is the BCSC truly there to protect the investors? What would the former investors say if they knew that **NOBODY** at the BCSC would even consider looking at the settlement offer? Are you (as Chair of the BCSC) held accountable for any of this? If not, who is? Who is responsible for not forwarding on time sensitive settlement offers that may have led to investors possibly getting some of their money back? Are your lawyers instructed to not forward such offers sent from Respondents to the Executive Director?
17. And additionally, as part of my Oral Submissions in November 2015, I again brought forward a formal application to the Panel, asking them to release the funds seized in the Asset Freeze Order that would allow the investors to still participate in the project. Despite having the majority of the former investors support, Staff Litigators again argued against the application – why? Why are they so against supporting the investors? Wharram can honestly say he was shocked when Staff argued against allowing the investors to participate in a large multi-million dollar project. Since this portion of the hearing, the latest phase of the project sold out and additional units are being built this summer. This again is money out of these investor's pockets.

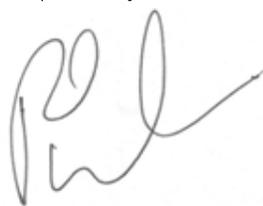
## A SIMPLE REQUEST

18. My request of you is simple – could you please explain in simple terms the process in which Staff Litigators are required to submit all settlement offers to their the Executive Directors. I know that in any other setting that if a settlement offer is submitted to a lawyer – they must convey that settlement offer to their client to avoid any hearing. Again, one would think that a lawyer working for the BCSC would essentially have the Executive Director as their client.
  
19. AS PART OF THE *FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT* (“FIPPA”), I WOULD LIKE TO KNOW IF EITHER STAFF LITIGATORS PAIGE LEGGATT OR OLUBODE FAGBAMIYE TOOK THE NOVEMBER 7, 2013 SETTLEMENT OFFER TO THE EXECUTIVE DIRECTOR FOR REVIEW? IF SO, COULD YOU PLEASE SUPPLY THE COMMUNICATION DOCUMENTATION BETWEEN THEM OR NOTES OF THEIR MEETING? IF THERE WAS NO COMMUNICATION, COULD YOU PLEASE EXPLAIN WHY THERE WAS NOT? ALSO, DO YOU CONDONE STAFF LITIGATORS NOT FORWARDING SETTLEMENT AGREEMENTS TO THE SENIOR MANAGEMENT?

If you are not able to answer these questions, could you please provide me the name and contact information of the person that is able to answer these questions. Despite the fact I understand you will take this as being very arbitrary, I would like a response back from you within the next 10 business days.

I look forward to your response.

Respectfully,

A handwritten signature in black ink, appearing to read 'Rod Wharram', written in a cursive style.

Rod Wharram