

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

AND

IN THE MATTER OF
ZULUTOYS LIMITED

AND

RBOPTIONS

DECISION

Hearing held: January 22, 2016

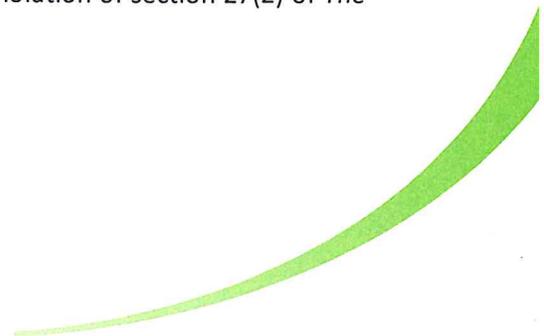
Before: The Honourable Larry Kyle and Gordon Hamilton (collectively the “Panel”)

Appearances: Brett Wawro for the Applicants
D.A. Smith for Staff, Securities Division
No appearances by Zulutoys Limited or RBOptions, or anyone on their behalf

Date of Decision: February 19, 2016

BACKGROUND:

1. In the Statement of Allegations by Staff of the Financial and Consumer Affairs Authority of Saskatchewan dated October 30, 2015, Staff alleged that Zulutoys Limited and/or RBOptions (hereafter the Respondents) “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 deals with whether the business activities of the Respondents, namely the marketing and sale of binary options, fall within the jurisdiction of *The Securities Act, 1988*. This preliminary issue has been fully addressed by the Panel in its companion decision involving RTG Direct Trading Group Ltd. and RTG Direct Trading Limited, a decision issued contemporaneous to the decision involving the Respondents (hereafter the *RTG Decision*). The Panel adopts and applies its reasons outlined in the *RTG Decision* to the findings of facts determined herein.

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 reliable. No evidence was presented to the contrary. Neither the Respondents nor anyone authorized to act on their behalf appeared.
4. Accordingly, the Panel makes the following findings of fact, on the basis of the verbal testimony of Mr. Wawro and the comprehensive documentary evidence submitted in support of his testimony:
 - a) That the Respondents provided an online trading platform accessible by Saskatchewan residents, to trade binary options;
 - b) That the Respondent, Zulutoys Limited stated on its public website that it was operating under the business name, RBOptions;
 - c) That, on the Respondents' public website, the Respondents represented that "the Services offered are non-delivery options trading services, and that when You trade with Us, You are not entitled to receive, and We are under no obligation to supply, any of the assets in relation to which You invest in binary options via the Website";
 - d) That, on the Respondents' public website, the Respondents advised that the data represented to investors on the website may not be accurate: "The pricing assigned to the

assets on the Website are the ones at which We are willing to sell options to You at that point in time; as such they may not directly correspond to real time market pricing at the point in time at which the sale of options occurs”;

e) That at no time were the Respondents registered as a ‘dealer’ in accordance with *The Securities Act, 1988*;

f) That, in 2015, a resident of Saskatchewan (hereafter the “Investor”) had opened a trading account with the Respondents, had deposited \$1500 USD, but the Investor had never effected a “trade”;

g) That the Investor was contacted by telephone by a representative of the Respondents shortly after he had opened his trading account;

h) That the Investor had been led to believe, as a result of his telephone conversation with the Respondents’ representative, that he would be able to turn thousands of dollars into millions of dollars by trading in binary options with the Respondents;

i) That the Investor had shortly thereafter requested the return of the funds which he had deposited in his trading account, on the advice of his adult children;

j) That prior to complying with his request to return the deposited funds, the Respondents had asked the Investor to provide them with a copy of his passport, his driver’s licence, a recent utility bill that showed his residential address, and credit card information;

k) That the Investor refused the request for the copies of specified documents, and that the Investor’s adult son, on behalf of the Investor, became involved and requested the return of his father’s deposited funds. The Respondents made a request for the adult son to then provide copies of the specified documents, which he summarily refused;

l) That the Investor’s adult daughter thereafter contacted Securities Division staff, who began their investigation into the activities of the Respondents;

m) That the Respondents eventually returned all of the deposited funds to the Investor.

ANALYSIS

5. The preliminary issue at the outset concerned the jurisdiction of this Panel over binary options in this specific fact situation. Binary options, in accordance with this Panel’s companion *RTG Decision*, are securities as contemplated in *The Securities Act, 1988*. At paragraph 28 in the companion *RTG Decision*, the Panel stated:

...this Panel has concluded that binary options are securities pursuant to section 2(1)(xiv) in that they are investment contracts.

6. The facts involving the Respondents differ from the facts in the *RTG Decision* in that there is no implication or suggestion that an investor would ever have any ownership interest in the underlying assets which were the subject of the binary option trading. To the contrary, the Respondents clearly advised potential investors that they were under no obligation to supply any of the underlying assets to an investor.
7. The Panel has determined that there is little to no significance to these different facts in relation to the application of the relevant provisions of *The Securities Act, 1988*. In *RTG Decision*, the Panel wrote at paragraph 15:

Binary options are always cash settled, without acquiring ownership in the underlying asset (notwithstanding the confusion in the representations by the Respondent in this matter). It is in essence a derivative product, allowing an investor to realize a return on the investment on the basis of the price movements of the underlying asset. Like most derivatives, the value or return of a binary option is based upon the variations in the performance of an underlying asset, whether or not there are any ownership rights that may be exercised in the underlying asset.

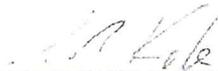
SANCTIONS REQUESTED

8. The requested sanctions are that the Panel issue the following orders, provided it is in the public interest to do so:
 - a) Pursuant to subsection 134(1)(a) of the Act, all of the exemptions in Saskatchewan securities law do not apply to the Respondents;
 - b) Pursuant to subsection 134(1)(d) of the Act, the Respondents shall cease trading in any securities or exchange contracts in Saskatchewan;
 - c) Pursuant to subsection 134(1)(d.1) of the Act, the Respondents shall cease acquiring securities or exchange contracts for and on behalf of residents of Saskatchewan;
 - d) 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;

- e) 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
- f) Pursuant to section 16.1 of the Act, the Respondents shall pay the costs of or relating to the hearing in this matter.

DECISION OF THE PANEL:

- 9. Consistent with its approach in the *RTG Decision*, the Panel has confirmed that binary options are securities within the scope of subsection 2(1)(ss)(xiv), being investment contracts.
- 10. Having found that the Respondents' binary options were securities under *The Securities Act, 1988* and given that the Respondents are not registered as dealers in Saskatchewan, the allegation has been proven that the Respondents "acted as dealers by engaging in the business of trading in securities or holding themselves out as engaging in the business of trading in securities in Saskatchewan" contrary to section 27(2) of *The Securities Act, 1988*.
- 11. One of the underlying purposes of securities legislation is investor protection. In this situation, the request by the Respondents for sensitive personal identification documents, as a precondition to the processing of the Investor's refund request, is concerning. Investors should always be vigilant in protecting themselves from potential identity theft, although there was no evidence that there was any imminent danger to the Investor in these circumstances.
- 12. The Sanctions requested of the Panel are accordingly approved and the consequential orders will be issued to accompany this decision. The monetary sanctions are within the range of sanctions granted in comparable circumstances based upon the cases cited by counsel and reviewed by the Panel. The Panel will issue its final and binding order after it has received submissions on the costs being sought in this matter.



The Honourable L. Kyle, Hearing Panel Member



Gordon D. Hamilton, Hearing Panel Chair