

Citation: 2013 BCSECCOM 9

Settlement Agreement

Symmetry 2 Mortgage Investment Corporation

Securities Act, RSBC 1996, c. 418

¶1 The Executive Director of the British Columbia Securities Commission (Executive Director) and Symmetry 2 Mortgage Investment Corporation (Symmetry) agree as follows:

Agreed Statement of Facts

Background

1. Symmetry is a non-reporting issuer incorporated in British Columbia with a head office in Vancouver. It is a mortgage investment company, commonly referred to as a “MIC”.
2. Symmetry has never filed a prospectus for the distribution of its securities, nor has it been registered in any capacity under the Act.
3. Symmetry has no prior record of regulatory or disciplinary proceedings.

Misconduct

4. Between 2003 and 2011, Symmetry distributed securities with a value of approximately \$13.9 million to 126 investors (the Distribution).
5. Symmetry, unaware of their obligation to file exempt distribution reports, failed to do so.
6. Upon being made aware by Commission staff of their filing obligations, Symmetry promptly filed exempt distribution reports claiming exemptions for the Distribution and paying the outstanding filing fees of \$11,213.70.
7. All of the exemptions claimed by Symmetry were applicable except for seven investors and \$550,460 (the Illegal Distributions).
8. Following the discovery of the Illegal Distributions, in cooperation with Commission staff, Symmetry sent letters to all affected investors that explained the error, and offered full rescission of the investors’ funds.

9. Symmetry provided signed acknowledgments of the rescission offer by each affected investor to BCSC staff.
10. Symmetry acknowledges that:
 - (a) it failed to ensure that it met its regulatory obligations as an issuer of securities in British Columbia;
 - (b) it failed to file the requisite exempt distribution reports and pay the associated fees for a period of 6 years; and
 - (c) with respect to the Illegal Distributions, it distributed securities without having filed a prospectus without the availability of an applicable exemption, contrary to s. 61 of the Act.

Mitigating Factors

11. Symmetry cooperated fully with BCSC staff promptly responding to all BCSC staff inquiries by:
 - (a) providing the requested list of shareholders and all distributions made between 2003 and 2011; and
 - (b) providing copies of all subscription agreements under which investors purchased its securities, showing the basis upon which Symmetry relied on various exemptions under the Act.
12. Symmetry has now filed all exempt distribution reports and paid all outstanding fees.
13. Each investor who received an offer of rescission elected to keep their investment with Symmetry.
14. There is no evidence that Symmetry's misconduct had a negative impact on its clients or investors. To date, BCSC staff has not received complaints from investors. The funds Symmetry raised were invested in mortgages, as part of its mortgage investment business.

Undertaking

15. Symmetry undertakes to pay \$10,000 to the Commission in respect of settlement of this matter, which sum is due and payable immediately without further demand.
16. Symmetry undertakes, under section 161(1)(a) of the Act to comply with the Act, the Securities Rules, and any applicable regulations.

Waiver

¶ 2 Symmetry waives any right it may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this Settlement Agreement.

Counterpart

¶ 3 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 4 February 19, 2013

¶ 5 John McKay
Symmetry 2 Mortgage Investment Corporation

Mauro Palumbo)
Witness Signature)
Mauro Palumbo)
Witness Name (please print))
300 – 576 Seymour Street)
)
Vancouver, B.C. V6B 3K1)
Address)
Barrister & Solicitor)
Occupation)

¶ 6 February 20, 2013

Paul C. Bourque

¶ 7 Paul C. Bourque, Q.C.
Executive Director