



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF DETERMINING) DFI No.: S-20-2978-24-FO01
Whether there has been a violation of the) OAH No.: 02-2023-DFI-00151
Securities Act of Washington by:)
) FINAL DECISION & ORDER AFFIRMING INITIAL
AltoTerra Capital Partners Ltd. and) ORDER ON SUMMARY JUDGMENT MOTION AS TO
Leah Kincaid,) ALTOTERRA CAPITAL PARTNERS LTD. AND LEAH
) KINCAID
)
Respondents.)

THIS MATTER has come before the Director ("Director") of the Washington State Department of Financial Institutions ("Department") for entry of the Director's Final Decision & Order pursuant to RCW 34.05.464.

1.0 PROCEDURAL HISTORY

On August 29, 2022, the Director, through Securities Administrator William M. Beatty, entered a Statement of Charges and Notice of Intent to Issue Order to Cease and Desist, to Impose a Fine, and to Charge Costs, S-20-2978-22-SC01, ("Statement of Charges") against AltoTerra Capital Partners Ltd. ("AltoTerra") Leah Kincaid ("Kincaid"), and Viktor Lawryniuk ("Lawryniuk"). Respondents AltoTerra and Leah Kincaid (collectively "Respondents") each submitted an Application for Adjudicative Hearing on September 26, 2022¹. On February 8, 2023, the Division of Securities ("Division") submitted a request to the Office of Administrative Hearings ("OAH") to assign an Administrative Law Judge ("ALJ") to schedule and conduct a hearing on the Statement of Charges.

On February 16, 2023, OAH issued a Notice of Prehearing Conference with ALJ Joni Derifield scheduling a prehearing conference for February 27, 2023 at 9:00 a.m.

On February 27, 2023, Respondents and a representative for the Division appeared for the prehearing conference by telephone. Respondents requested a continuance for the purpose of securing legal assistance. ALJ Joni

¹ Viktor Lawryniuk entered into a Consent Order with the Division on January 24, 2023.

1 Derifield granted a continuance request. OAH issued an Order Granting Continuance and Notice of Prehearing
2 Conference from ALJ Joni Derifield scheduling a prehearing conference for March 15, 2023, at 9:00 a.m.

3 On March 15, 2023, Respondents and a representative for the Division appeared for the prehearing conference
4 by telephone. Respondents again requested a continuance for the purpose of securing legal assistance, and ALJ Joni
5 Derifield again granted the request. OAH issued an Order Granting Continuance and Notice of Prehearing Conference
6 from ALJ Joni Derifield scheduling a prehearing conference for April 11, 2023 at 11:00 a.m.

7 On April 11, 2023, a representative for the Division appeared for the prehearing conference by telephone, but
8 Respondents did not appear. ALJ Joni Derifield found the Respondents to be in default. OAH issued an Order
9 Dismissing Appeal—Default from ALJ Joni Derifield on April 12, 2023.

10 On April 19, 2023, Respondents filed a Petition to Reinstate. On May 18, 2023, Respondents and a
11 representative for the Division appeared by telephone on the Petition to Reinstate. ALJ Joni Derifield granted the
12 Respondents' petition, vacating the default and reinstating the hearing. OAH issued an Order Granting Petition to
13 Reinstate Hearing from ALJ Joni Derifield on May 24, 2023.

14 On August 11, 2023, the Division filed a Motion for Summary Judgment. On September 5, 2023, ALJ Joni
15 Derifield held a hearing on the Department's Motion for Summary Judgment at which Respondents were present and
16 the Department was represented by counsel.

17 On October 6, 2023, ALJ Joni Derifield issued an Initial Order on Summary Judgment Motion ("Initial
18 Order"). OAH served the Initial Order on Respondent Kincaid by email and on Respondent AltoTerra by First-Class
19 mail on the same date. In the Initial Order, ALJ Joni Derifield granted the Department's Motion for Summary
20 Judgment, finding that Respondents violated Chapter 21.20 RCW as set out in the Statement of Charges. The Initial
21 Order ordered that Respondent cease and desist from any further violations of the Securities Act of Washington.
22 Additionally, the Initial Order ordered Respondent AltoTerra to pay a fine of \$30,000 and Respondent Kincaid to pay
23 a fine of \$20,000. Finally, the Initial Order ordered Respondents to jointly and severally pay investigative costs of
24 \$5,000.

1 Pursuant to RCW 34.05.464 and WAC 10-08-211, Respondents had twenty (20) days from the date of service
2 of the Initial Order to file a Petition for Review with the Director of the Department. Respondents did not file a
3 Petition for Review during the statutory period.

4 **2.0 RECORD ON REVIEW**

5 The record presented to the Director for his review and for entry of a Final Decision & Order was the entire
6 record on review from OAH, including the following:

- 7 2.1 Statement of Charges;
- 8 2.2 Application for Adjudicative Hearing for AltoTerra Capital Partners Ltd.;
- 9 2.3 Application for Adjudicative Hearing for Leah Kincaid;
- 10 2.4 Request to OAH for Assignment of Administrative Law Judge;
- 11 2.5 Notice of Prehearing Conference, dated February 16, 2023, with certificate of service;
- 12 2.6 Order Granting Continuance and Notice of Prehearing Conference, dated February 28, 2023, with
13 certificate of service;
- 14 2.7 Order Granting Continuance and Notice of Prehearing Conference, dated March 21, 2023, with
15 certificate of service;
- 16 2.8 Order Dismissing Appeal—Default, dated April 12, 2023, with certificate of service;
- 17 2.9 Respondents Petition to Reinstate, dated April 19, 2023;
- 18 2.10 Order Granting Petition to Reinstate Hearing, dated May 24, 2023, with certificate of service;
- 19 2.11 Department’s Motion for Summary Judgment, dated August 11, 2023, with proof of service; and
- 20 2.12 Initial Order on Summary Judgment Motion, dated October 6, 2023, with certificate of service.

21 **3.0 DIRECTOR’S CONSIDERATIONS**

22 The Director reviews the record in each matter calling for entry of a final decision and order, even in the
23 absence of a petition for review. The Director has made a review of the Statement of Charges in relation to the
24 language of the Initial Order and finds (1) that the Statement of Charges sets forth claims upon which relief can be
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1 granted as pleaded, (2) that the Facts for Purpose of Summary Judgment and Conclusions of Law in the Initial Order
2 are consistent with what the Securities Division pleaded in the Statement of Charges, and (3) that the sanctions, fines,
3 and costs imposed are not in excess of the prayer for relief in the Statement of Charges. On this basis, the Director
4 affirms the Initial Order of ALJ Joni Derifield.

5 4.0 FINDINGS OF FACT AND CONCLUSIONS OF LAW

6 4.1 Findings of Fact. The Director affirms Section 3.0 of this Order and Paragraphs 4.1 through 4.24,
7 inclusive, of the Initial Order.

8 4.2 Conclusions of Law. The Director affirms Section 3.0 of this Order and Paragraphs 5.1 through 5.21,
9 inclusive, of the Initial Order.

10 4.3 Affirmation of Initial Order. The Director affirms Paragraphs 6.1 through 6.7, inclusive, of the Initial
11 Order.

12 5.0 FINAL DECISION & ORDER

13 Based upon the foregoing, and the Director having considered the record and being otherwise fully advised,
14 NOW, THEREFORE, IT IS HEREBY ORDERED:

15 5.1 Respondent AltoTerra Capital Partners Ltd. shall cease and desist from any further violations of
16 Chapter 21.20 RCW.

17 5.2. Respondent Leah Kincaid shall cease and desist from any further violations of Chapter 21.20 RCW.

18 5.2 Respondent AltoTerra Capital Partners Ltd. shall be liable for and shall pay a fine of \$30,000.

19 5.3 Respondent Leah Kincaid shall be liable for and shall pay a fine of \$20,000.

20 5.4 Respondents AltoTerra Capital Partners Ltd. and Leah Kincaid shall be liable for and shall pay costs
21 of \$5,000 for the investigation costs relating to investigating their violations of the Securities Act of Washington,
22 chapter 21.20. RCW.

23 6.0 RECONSIDERATION

24 Pursuant to RCW 34.05.470, the Respondents have the right to file a Petition for Reconsideration stating the
25 specific grounds upon which relief is requested. The Petition must be filed in the Office of the Director of the

1 Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S.
2 Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of the Final Decision &
3 Order upon Respondents. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a
4 Petition for Reconsideration a prerequisite for seeking judicial review in this matter.

5 A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the petition
6 is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date
7 by which it will act on a petition.

8 7.0 STAY OF ORDER

9 The Director has determined not to consider a Petition to Stay the effectiveness of this order. Any such
10 requests should be made in connection with a Petition for Judicial Review made under chapter 34.05 RCW and RCW
11 34.05.550.

12 8.0 JUDICIAL REVIEW

13 Respondents have the right to petition the superior court for judicial review of this agency action under the
14 provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510
15 and sections following.

16 9.0 NON-COMPLIANCE WITH ORDER

17 If Respondents do not comply with the terms of this order, the Department may seek its enforcement by the
18 Office of the Attorney General to include the collection of fines and fees imposed herein. Failure to comply with this
19 Final Decision & Order may also prompt additional actions against Respondents by the Department as permitted by
20 the Securities Act of Washington, Chapter 21.20 RCW, for failure to comply with a lawful order of the Department.


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1 10.0 SERVICE

2 For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review, service is effective
3 upon deposit of this order in the U.S. mail with a declaration of service attached hereto.

4 DATED this 26th day of February 2024.

6 STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

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9 Charles E. Clark, Director
Washington State Department of Financial Institutions

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CERTIFICATE OF SERVICE

1 I, Jeanette Baluyut, certify that I personally delivered or mailed a copy of the Final Decision
2 and Order to parties named below at their respective addresses, postage pre-paid, on February 27, 2024
3

4 Jeanette Baluyut
5 Jeanette Baluyut, Executive Assistant
6 Washington State Department of Financial Institutions

7 *Mailed to the following:*

8 AltoTerra Capital Partners, Ltd.
9 Leah Kincaid
10 400 S. Anacortes St.
11 Burlington, WA 98233

Stephen Manning, Esq.
Assistant Attorney General
Office of the Attorney General
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12 Leah Kincaid
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