

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

case no: **15844/2012**

In the *ex parte* application of:

**EXECUTIVE OFFICER OF THE
FINANCIAL SERVICES BOARD**

Applicant

In re the collective investment scheme and financial services business of:

**ROCKLAND ASSET MANAGEMENT AND
CONSULTING (PTY) LTD**

(Registration No. 2002/0176720/07)

First Respondent

ROCKLAND GROUP HOLDINGS

(Registration No. 2003/031605/07)

Second Respondent

**ROCKLAND TARGETED DEVELOPMENT
INVESTMENT FUND**

(Registration No. IT4321/2004)

Document filed herewith:



Third Respondent

FILING NOTICE

Documents filed herewith:

1. Curator's progress report dated 31 July 2014.

DATED at CAPE TOWN on this the 30th day of JULY 2014.

A handwritten signature in black ink, consisting of several loops and a vertical stroke, positioned above a horizontal line.

SHEPSTONE & WYLIE

Attorneys for applicant

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CAPE TOWN

Ref: AF07/12/FINA7493.50

TO: THE REGISTRAR

High Court

CAPE TOWN

**(WESTERN CAPE HIGH COURT, CAPE TOWN)
IN THE HIGH COURT OF SOUTH AFRICA**

Case No.: 15844/2012

In the ex parte application of:

**EXECUTIVE OFFICER OF THE FINANCIAL
SERVICES BOARD**

Applicant

in re the collective investment scheme and financial services business of

ROCKLAND ASSET MANAGEMENT AND CONSULTING (PTY) LTD
(Registration No. 2002/017672/07) and

ROCKLAND TARGETED DEVELOPMENT INVESTMENT FUND
(Registration No. IT4321/2004)

and the business of

ROCKLAND PROPERTY INVESTMENT FUND
(Registration No. IT4320/2004)

PROGRESS REPORT JULY 2014

Court order of 17 December 2013

1. Pursuant to paragraph 3 of the Order of the Court issued on 17 December 2013, I deal with the matters set out therein in the same sequence hereunder.

The status of the Curatorship as at 30 June 2014 – paragraph 3.1

2. There have been no substantial changes of the position in respect of the control, management and administration of the investors' assets since my Progress Report of November 2013. As indicated in that report, I took steps to place the control, management and administration of a substantial part of the assets in the hands of the investors. The investors, through the Investors' Committee, previously resolved to ring-fence the assets in a private equity fund (the Oakland Fund) to be managed on their behalf by an asset manager. However, the investors have not yet appointed an asset manager to control, manage and administer the assets they attempted to transfer to the Oakland Fund. I revert to the position of the Oakland Fund in paragraph 20 and following.
3. I remain involved in the management and financial functions in respect of the management and administration of the assets that the investors attempted to transfer to the Oakland Fund.

Furthermore, there are still many administrative matters to be dealt with in the management of the remaining assets and the claims to which reference is made hereunder.

4. New Boards of Directors have been appointed for Rapicorp 122 (Pty) Ltd, Rapicorp 123 (Pty) and C-Max Investments 300 (Pty) Ltd pursuant to decisions of the Investors' Committee. In the case of the Rapicorp companies Mr Wentzel Oaker was retained as a director as he represented the Johnny Bravo Trust which holds 20% of the shares in these companies. This 20% holding is subject to the outcome of the action referred to in paragraph 10 of this report. Mr Oaker advised that he would not attend a scheduled Board meeting for reasons which the other Board members considered to be unacceptable. The Investors' Committee agreed and decided to remove him as a director from the Boards of the Rapicorp companies. Decisions to remove him from the Boards were taken at meetings of the shareholders held on 23 June 2014.

5. The 2012 audits have been finalised as well as the February 2013 audit for the business of Rockland Asset Management. However, the latter has not been signed by me as there is a dispute in respect of the rental claimed for use of the premises by Rockland Asset Management. Copies of the 2012 annual financial statements of the Rapicorp companies, C-Max, Rockland Targeted Development

Investment Fund and Rockland Property Investment Fund have been forwarded to the Financial Services Board.

6. The position of the Curatorship therefore in summary remains that the substantial responsibilities for the Oakland City development and management of the C-Max property have been transferred to the Boards of Directors of Rapicorp 122 (Pty) Ltd, Rapicorp 123 (Pty) Ltd and C-Max Investments 300 (Pty) Ltd. This results therein that (apart from dealing with the claims) the functions and actions still to be performed and undertaken by me are mainly managerial relating to:

- 6.1 payments;

- 6.2 accounting;

- 6.3 dealing with the other assets such as receiving the last dividend of the L A Clothing Investment, matters affecting Nelco to which reference is made in 8.2 hereunder, preparing for the end of the lock-up periods in relation to the underlying Aspen and Sasol investments and matters incidental thereto; and

6.4 dealing with the auditors to ensure that audits of the
Curatorship functions (of the businesses under Curatorship)
and of the subsidiary companies be completed.

7. The Investors' Committee meets regularly and is functioning
effectively.

Assets dealt with – paragraph 3.2

8. No assets have been disposed of or alienated to third parties. There
are however two assets that I have dealt with as follows, namely:

8.1 I have entered into an agreement to dispose of furniture,
fittings, vehicles and fixtures to Rockland Group Holdings
(Pty) Ltd for R692, 699.00 being the book value thereof at 28
February 2013. I requested permission in paragraph 17 of my
November 2013 Progress Report for the disposition of these
assets, but this was not dealt with in the 17 December 2013
Court Order. The agreement is subject to a formal agreement
which is being prepared and will provide that it is subject to
such permission by the Court. I request that such permission
be sought in the order to be given pursuant to the
consideration of this report.

8.2 The shares in Nelco Furniture Manufacturers (Pty) Ltd that, despite several efforts, could not be disposed of. Accordingly I applied under case number 7145/2014 that the company be placed under supervision and business rescue proceedings. The Order was granted on 23 April 2014. The process followed by the Business Rescue Manager, Mr Trevor Glaum, has been successful and well managed by him. The staff members have resigned so that retrenchment packages need not be paid. They were employed by clients of Nelco, another factory and some by the manufacturer that is in the process of purchasing the machinery and taking over the premises. Such takeover proposals resulted from a communication that I received from a manufacturer which led to negotiations between him and Mr Glaum. The manufacturer is in the process of entering into a new lease with the landlord who is prepared to accept him as a new tenant as well as an agreement with Mr Glaum for the purchase of the equipment in the factory.

Irregularities – paragraph 3.3

9. I have not established further irregularities other than those previously reported on. It is the intention to deal with the civil

claims arising from such irregularities and I do not contemplate instituting criminal proceedings at present.

Civil actions – paragraph 3.4

10. The pleadings in the action under case number 15341/2013 (dealt with in my November 2013 Report) for orders for the transfer of 28 shares in Rapicorp 122 (Pty) Ltd and 24 shares in Rapicorp 123 (Pty) Ltd to Rockland Property Investment Fund (the business of which is under my Curatorship) on the basis that these shares were wrongfully obtained from Rockland Property Investment Fund, have closed and the parties have made discovery. I shall now apply for a date of hearing.

11. I have issued Summons under case number 10984/2014 against previous management, institutions under control of previous management and other parties for the recovery of amounts paid by the Rockland Targeted Development Investment Fund and Rockland Property Investment Fund. The claims are substantial, being for more than R400 million subject to alternative claims for less. The claims arise from diverting an investment opportunity by the acquisition of properties by the Rapicorp companies, sale of shares in these companies to Rockland Property Investment Fund at

excessive prices, the charging of inflated fees and for fees irregularly charged.

12. I have instituted action under case number 5417/2014 against Rockland Group Holdings (Pty) Ltd for the recovery of R31,282,386.46 which it is indebted to Rockland Asset Management and Consulting (Pty) Ltd. The action is defended.

13. Born Free Investments 247 (Pty) Ltd, a subsidiary of Rockland Group Holdings (Pty) Ltd instituted action under case number 9069/2014 against me in my capacity as curator of the business of Rockland Asset Management and Consulting (Pty) Ltd in respect of alleged rental claimed. The summons was issued and served despite the prohibition in paragraph 6.2 of the Court Order in this matter granted on 20 August 2012. I am defending this action.

Costs of the Curatorship - paragraph 3.5

14. The costs of the curatorship since 1 November 2013 to 30 June 2014 are as follows:

14.1 curator's fees and disbursements in respect of copies, printing, etc.	949 620
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14.2 cost of travel for Mr H Griffiths and curator to Investors'

Committee meetings in Johannesburg	70 484
14.3 legal fees in respect of the claims	559 283
14.4 accounting and administrative assistance	709 828
14.5 the cost of hiring offices and incidental services	48 426
14.6 cost of tax advice	53 250
Total	R2 390 711

15. I point out that the fees in terms of the Trust Subscription Agreements between the investors and Rockland Asset Management and Consulting (Pty) Ltd over the period from 1 November 2013 to 30 June 2014 amounted to **R1 638 401**, which has been accumulated into the account of the business of Rockland Asset Management and Consulting (Pty) Ltd. Expenses of the curatorship have been met from these funds. Had the assets of which the management and administration have been transferred to the Oakland Fund (but for which I still attend to administrative functions) been included, such fees would have amounted to approximately **R4 974 000**.
16. Full details of the amounts expended have been provided to the Registrar.

My recommendations – paragraph 3.6

17. The affairs of the Curatorship have been running smoothly and with good cooperation between the Investors' Committee and I. Apart from administrative, accounting and auditing matters in respect of which I am ably assisted by Mr Horton Griffiths, a chartered accountant, my main focus now is to administer the actions.
18. I therefore have no recommendation to change the present arrangements save as set out in paragraph 20 and following.

Further orders requested

19. The further orders requested by me are:

19.1 for purposes of paragraph 8.1 above to comply with the provisions of the Orders in terms of which I have been appointed; and

19.2 to change the present administrative arrangements as set out in paragraph 33 and explained in paragraph 20 and following.

20. In paragraphs 2 and 7 of my November 2013 Report, I reported that the control, management and administration of a substantial part of the Investors' assets had been placed in their hands by way of transferring the control, management and administration of

Rapicorp 122 (Pty) Ltd, Rapicorp 123 (Pty) Ltd, C-Max Investments 300 (Pty) Ltd and debentures in LA Clothing to the Oakland Fund ("the assets concerned"). This occurred at a meeting with representatives of the asset manager that had been identified for appointment in the Trust Deed of the Oakland Fund. The representatives received same on behalf of the Oakland Fund. Apart from handing over registers and other relevant documentation, the hand-over of control was basically symbolic taking into account that beneficial ownership of the assets vested in the pension fund investors as beneficiaries of the Rockland Targeted Development Investment Fund and Rockland Property Investment Fund (both of which are bewind trusts). The Oakland Fund likewise is a bewind trust with the same beneficiaries.

21. I could, however, not transfer the shares in C-Max Investments 300 (Pty) Ltd (which are registered in the name of Rockland Targeted Development Investment Fund) and Rapicorp 122 (Pty) Ltd and Rapicorp 123 (Pty) Ltd (which are registered in the name of Rockland Property Investment Fund) without the consent of the Boards of Directors of those companies. I was in the process of arranging to appoint new Boards and therefore left the matter for processing when the Boards were appointed. It took some time as I had to obtain court orders to call meetings of shareholders to make such changes.

22. In effect such hand-over was not implemented in practice as the investors changed their mind about the appointment of the asset manager initially considered and identified. The investors were subsequently unable to agree on a different asset manager. Indeed, it appeared to me as if it was not likely that an asset manager would be appointed, inter alia, because the need therefore has fallen away as a result of the subsequent developments.
23. The intended structure was that the Oakland Fund would hold the assets and that the assets would be managed by an asset manager. As no asset manager has been appointed, the Oakland Fund's trustee could not control, manage and administer the assets. I, through my office, continued to deal with managerial and financial functions in respect of these assets as set out in paragraph 3 above.
24. Furthermore, as set out in paragraph 4, there are now new Boards of Directors managing Rapicorp 122 (Pty) Ltd, Rapicorp 123 (Pty) Ltd and C-Max Investments 300 (Pty) Ltd.
25. With effect on 11 July 2014, Rapicorp 123 (Pty) Ltd transferred its property to Rapicorp 122 (Pty) Ltd. Rapicorp 122 (Pty) Ltd owns substantial fixed properties in the Cape Flats that are intended for development. For this purpose the investors and I have caused the

new Directors and also further consultants to be appointed to see to the development process (in conjunction with a number of other consultants previously already engaged in this project).

26. The Investors' Committee decided to place the property owned by C-Max Investments 300 (Pty) Ltd on the market, alternatively to sell the shares in the Company. Progress has been made in this regard.
27. The final repayment in respect of the investment in LA Clothing will be made on 30 November 2014.
28. In summary therefore the assets concerned will be managed by competent persons appointed for such purposes by the Investors' Committee or are in the process of being disposed of or run down.
29. However, I am concerned that the lines of communication and accountability between the investors and those presently managing and developing the assets concerned on their behalf have become unclear due to the uncertain status of the Oakland Fund. This is of particular concern in respect of the development in terms of physical size and financial implications.

30. I concluded that it would be in the best interests of the investors that the assets concerned should continue to be held under my control in the curatorship with the control, management and administration thereof vesting in me in my capacity as the curator of Rockland Targeted Development Investment Fund and Rockland Property Investment Fund in terms of the Court Orders of 6 December 2012, 16 July 2013 and 3 September 2013.

31. At the meeting of the Investors' Committee held on 11 July 2014, I advised the Investors' Committee of my concern and conclusion. The Investors' Committee resolved that:

31.1 In the circumstances an asset manager was not required at present;

31.2 the assets concerned should continue to be held under my curatorship; and

31.3 it supported the proposal that I approach the Court for an order as set out herein.

32. With respect I submit that the transfer of the control, management and administration of the assets concerned to the Oakland Fund was not effective nor in any way put into effect and should

therefore in my opinion be treated as null and void *ab initio*. The trustee of the Oakland Fund accepted this conclusion.

33. To avoid the possibility of disputes or misunderstanding I hereby request the Court to grant an order confirming that the attempted transfer of the control, management and administration of the assets concerned to the Oakland Fund be set aside as null and void *ab initio*.

34. I have not lost from sight that ultimately arrangements will have to be made to transfer the assets under curatorship to the beneficial owners. I expect that it will become clearer how this can be done when Rapicorp 122 (Pty) Ltd has clarity in respect of the development rights of its properties for which it is applying.



P-D Kriel

31 July 2014