

Box 671

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

Case no. : **15844/2012**

In the matter between:

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 Number: 2002/0176720/07)

First Respondent

ROCKLAND TARGETED DEVELOPMENT INVESTMENT FUND

(Registration Number: IT4321/2004)

Second Respondent

and



BLUE NIGHTINGALE TRADING 169 (PTY) LTD

Intervening Party

and

ROCKLAND PROPERTY INVESTMENT FUND

(REGISTRATION NUMBER: IT4320/2004)

Fourth Respondent

FILING NOTICE

KINDLY TAKE NOTICE that the curator's tenth progress report dated 28 January 2020 is filed herewith.

DATED at CAPE TOWN this 30th day of **JANUARY 2020**.



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AND TO: THE REGISTRAR OF THE HONOURABLE COURT
Western Cape High Court
Cape Town

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

Case No.: 15844/2012

In the ex parte application of:

**EXECUTIVE OFFICER OF THE FINANCIAL SERVICES BOARD
(now the Financial Sector Conduct Authority) 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)



TENTH PROGRESS REPORT - JANUARY 2020

Introduction and overview

1. This Progress Report is part of a series of Reports prepared by me pursuant to my appointment as Curator of the businesses of the entities (the Rockland entities) referred to in the heading of this Report. This

introduction is a concise overview as required in terms of paragraph 5.7 of the Order of 20 August 2014.

2. I was appointed as a Curator of the businesses of the first two entities in 2012 and of the business of the third entity in 2013. The appointments were made following applications by the Executive Officer of the Financial Services Board ("FSB") (as it then was) in terms of the provisions of section 5 of the Financial Institutions (Protection of Funds) Act, 28 of 2001. The first application by the FSB was based on the findings contained in a formal FSB inspection report that revealed that the Rockland entities *inter alia* conducted an unlawful (unregistered) collective investment scheme business. The second application was made to enable me to institute action on behalf of Rockland Property Investment Fund which held assets for the Rockland Targeted Development Investment Fund. The FSB has since been replaced by the Financial Sector Conduct Authority but for convenience and clarity I continue to refer to it as the FSB.
3. I was required to file an initial Report dated 2 October 2012. I filed a Supplementary Report dated 28 November 2012 and thereafter filed Progress Reports dated 28 May 2013, 27 August 2013, 30 November 2013, 31 July 2014, 29 January 2015, 28 January 2016, 27 January 2017, 31 January 2018 and 28 January 2019.
4. From these Reports I submit it should be clear that a full assessment of the affairs of the businesses was initially compiled and that much progress has been made to date to dispose of and deal with the assets and other

issues arising therefrom, including the institution of litigation. However my task is not yet complete.

5. The present nature of the business of the Rockland entities may be summarised as follows:
 - 5.1 Rockland Targeted Development Investment Fund is a bewind trust and its business holds assets on behalf of five investors that are all registered pension funds. The main remaining investment is in Rockland Property Investment Fund;
 - 5.2 Rockland Property Investment Fund is also a bewind trust and its business holds 80% (claiming 100%) of the shares of Oakland City Development Company (Pty) Ltd which owns a large property on the Cape Flats; and
 - 5.3 Rockland Asset Management and Consulting (Pty) Ltd is a financial institution whose business used to administer (but no longer does) the other two businesses. Having the business of RAM under curatorship remains essential as, *inter alia*, it has a claim worth more than R32 million referred to in 28 below and all documentation pertaining to the businesses of the trusts belong to its business.
6. In terms of the Order of Court dated 6 December 2012 an Investors' Committee was established, of which I am a member and on which is

represented all the pension funds whose monies are invested in Rockland Targeted Development Investment Fund and, through it, partially in Rockland Property Investment Fund. I have, throughout the duration of the curatorship been working in close conjunction with the investors' committee.

7. The basic arrangement or structure of the various entities administered in the curatorship has changed as a result of assets being distributed and the provisional judgment of the court referred to in 27 hereunder. A property and most of the financial and disposable share investments have been realised and substantial part repayment of their investments made to the investors. I shall hereunder deal in more detail with developments in respect of each asset.

- 8 The management agreements between Rockland Asset Management and Consulting (Pty) Ltd and Rockland Property Investment Fund and Rockland Targeted Development Investment Fund were cancelled during 2019. The provisions of paragraph 4 of the order of 6 December 2012 in respect of Aspen and Imithi (see 20 below), requiring the management agreements to remain in place, had fallen away as had the like requirement in the Sasol agreement (see 13 and 21 below). It is clear from the provisional judgment (see 27 below) that Rockland Asset Management and Consulting (Pty) Ltd, if its business continued providing management services, would be trading in insolvent circumstances. Whatever management is necessary is done or managed by me in my

capacity as curator, with the costs being met directly by Rockland Targeted Development Investment Fund.

Court order of 22 February 2019

9. Pursuant to paragraph 4 of the Order of the Court issued on 22 February 2019, I deal with the matters set out therein in the same sequence hereunder.

The status of the Curatorship as at 31 December 2019 – paragraph 4.1

10. In terms of paragraph 3 of the Order of Court of 6 December 2012 the investors' committee has the final say in respect of certain matters – dealing mainly with the sale of assets and settlements with the previous management of the Rockland entities.
11. In practice, the usefulness of the committee has extended to form a *de facto* board of decision takers equal to a board of directors. I report to the members and we meet regularly to discuss steps to be taken in respect of matters where policy decisions must be taken.
12. Oakland City Development Company (Pty) Ltd which owns the Oakland City Development, of which the investors hold an 80% interest through Rockland Property Investment Fund, has its own board of directors appointed by me in my capacity as curator of TDI. The Spatial Planning, Environment and Land Use Management Committee of the City Council of

Cape Town has approved the Oakland City development framework application. Under case number 16779/17 in this division of the High Court, the Philippi Horticultural Area Food and Farming Campaign and Mr N A Sunday applied for the review of various rights granted in respect of the Oakland properties from 2011 to 2017. This application has been opposed by Oakland City Development Company (Pty) Ltd and all of the numerous Respondents cited in the matter. The matter was argued on 15 and 16 October 2019. Judgment was reserved and has not yet been delivered.

13. The only other remaining investment is a share investment with its ultimate holding in Sasol. This is subject to a time linked restriction that will run out in 2028 and capable of disposition to BEE qualified purchasers. Attempts to sell these shares to BEE qualified purchasers are being made.
14. I am engaged in litigation as set out below.
15. In the performance of my duties as curator, I am assisted by Mr Horton Griffiths CA (SA), whom I have appointed with the approval of the FSB. He oversees the book keeping, accounting and auditing of the accounts of the various entities and companies.
16. The Investors' Committee has established risk management procedures and an appropriate checklist has been agreed and prepared. These issues are considered at every meeting of the Investors' Committee.

Assets dealt with - paragraph 4.2

17. An investment in LA Clothing was fully repaid in 2014 and the proceeds kept by and utilised within the curatorship in respect of the costs thereof, in particular the costs of maintaining the property development of Oakland City. No distribution was made from such proceeds.
18. Nelco Furniture Manufacturers (Pty) Ltd was initially placed under supervision and business rescue proceedings and subsequently an application has been made for the liquidation of the Company pursuant to which no dividend is expected.
19. The fixed property of C-Max Investments 300 (Pty) Ltd was sold. It wholly owned an industrial building which was its only asset. Out of the net proceeds of the sale after taking into account the costs of the sale and the mortgage bond, the sum of R51, 9 million was during 2015 distributed to the investors. This amounted to 10% of their total investments in the Rockland entities.
20. The Aspen share investment was in 2015 realised in terms of a complicated disinvestment. The investment was transferred to the investors as direct shareholdings in Aspen and a small portion in cash. The value of the shares and the cash distributed to the investors amounted to R363, 953,892. This is equal to 70% of the total amounts

invested by the investors in the Rockland entities at the time of my appointment.

21. During 2018 the SASOL investment (that had been time bound until 30 June 2018) was partially freed and partially further time bound until 2028 as set out in paragraph 13.
22. The distributions made to investors to date equal 80% of the total amounts invested by them in the Rockland entities. The remaining assets are (depending on the outcome of the court actions dealt with in this report) estimated to have values exceeding the balance of the investment amounts (but excluding provision for growth or interest thereon).

Irregularities – paragraph 4.3

23. I have not established any further irregularities other than those previously reported on. In a provisional judgment in the matters referred to in 27 below, findings are made of irregularities that will require further consideration when the judgment is final. It is the intention to finalise the civil claims arising from such irregularities and I do not contemplate instituting criminal proceedings at present.

Civil actions by or against the curator - paragraph 4.4

24. I have instituted four actions and an application while one action and an application have been instituted against me – the details of which are more fully set out hereunder.

25. I instituted action under case number 15341/2013 for orders for the return of 20% of the shares in Oakland City Development Company (Pty) Ltd and Rapicorp 123 (Pty) Ltd on the basis that these shares were wrongfully obtained from Rockland Property Investment Fund by the Johnny Bravo Trust, a trust under the control of Wentzel Oaker (a member of former management).

26. I instituted action under case number 10984/2014 against previous management, institutions under control of previous management and other parties for the recovery of amounts paid out by the Rockland Targeted Development Investment Fund and Rockland Property Investment Fund.

27. The abovementioned actions 15341/2013 and 10984/2014 were consolidated and the trial commenced on 13 February 2017 and was finalised on 26 June 2018. Provisional judgement was given on 2 April 2019 and amplified on 3 January 2020 but subject to calculations by the parties of two amounts that must be based on valuations of the property and the minable sand thereon. The outcome is very successful in that the

immutable aspects of the order (i.e. those parts of the order that will be unaffected by the further calculations) have the following result:

- 27.1 The 20% shareholding in Oakland City Development Company (Pty) Ltd and Rapicorp 123 (Pty) Ltd held by the Johnny Bravo Trust re-vests in Rockland Property Investment Fund, the creation of a R6,7 million loan account due to the Johnny Bravo Trust is reversed, and The Johnny Bravo Trust must pay an amount of R500 000 to the Rockland Property Investment Fund that was repaid in respect of that ostensible loan;
- 27.2 Wentzel Oaker (part of former management), Global Pact Trading 151 (Pty) Ltd (a former trustee) and Rockland Asset Management and Consulting (Pty) Ltd are jointly and severally liable to Rockland Targeted Development Investment Fund and Rockland Property Investment Fund for the diversion of a corporate opportunity in the amount of R62 032 623.71;
- 27.3 Clint Oaker (part of former management) is liable to Rockland Targeted Development Investment Fund and Rockland Property Investment Fund for the diversion on the same basis in the amount of R15 508 155.92;
- 27.4 Wentzel Oaker, Clint Oaker, Daren Pillay (also part of former management), Global Pact Trading 151 (Pty) Ltd and Rockland Asset Management and Consulting (Pty) Ltd are jointly and severally liable to Rockland Targeted Development Investment Fund

and Rockland Property Investment Fund in respect of fees irregularly charged in the amount of R22 274 884;

27.5 interest on the foregoing amounts is payable from 25 June 2014 at the rate of 15.5% per annum, which to date comes to approximately R85 million;

27.6 Wentzel Oaker, Clint Oaker, Daren Pillay, Global Pact Trading 151 (Pty) Ltd and Rockland Asset Management and Consulting (Pty) Ltd are jointly and severally liable for legal costs, including the costs of three counsel, with the liability of Clint Oaker and Daren Pillay being limited to 20% of those costs.

The foregoing capital and interest total approximately R185 million. To that must be added the 20% shareholding in Oakland City Development Company (Pty) Ltd and Rapicorp 123 (Pty) Ltd, which equates, at a gross valuation of the Schaapkraal development of R350 million, to a further R70 million in value before taking into account any taxes due.

In addition the court upheld, on the merits, my claims for excess payment for shares against Wentzel Oaker, Global Pact and Rockland Asset Management and Consulting (Pty) Ltd jointly and severally; as well as for excessive management fees and performance fees against Rockland Asset Management and Consulting (Pty) Ltd. The quantification of those claims is yet to be determined (as set out above), and the liability is accordingly contingent.

28. I instituted action under case number 5417/2014 against Rockland Group Holdings (Pty) Ltd for the recovery of an amount of R31,282,386.46 which it is indebted to Rockland Asset Management and Consulting (Pty) Ltd. I also instituted action against Mr Wentzel Oaker, case number 0297/2016 in this Court for the same amount. He was the sole director of the two companies involved in this action. The claim against him is that he entered into an agreement between these companies that has the effect that Rockland Group Holdings Limited pleads that it is not liable for the claim. I allege that this conduct means he breached his fiduciary duties to Rockland Asset Management and Consulting (Pty) Ltd. I had applied to join Mr Wentzel Oaker to the first action, but was refused leave by the Court to do so. This matter has been extensively delayed as a result of a discovery issue argued before the Court on 13 October 2015. Subsequently an Order was issued on 8 June 2016 whereafter reasons were provided by the Court on 28 April 2018. Consequently the pre-trial hearings have had to be postponed many times.

29. 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 delivered a Special Plea in respect of the prohibition which was not upheld by the Court. I was granted leave to appeal to the full bench and my appeal was successful with the Court dismissing the claim with costs.

Born Free Investments 247 (Pty) Ltd then applied to the Supreme Court of Appeal for special leave to appeal which was heard on 8 March 2019. The Supreme Court of Appeal upheld my special plea that in terms of the orders by which I was appointed as curator, Born Free Investments 247 (Proprietary) Limited required the leave of the Court to proceed against Rockland Asset Management and Consulting (Pty) Ltd and overruled the dismissal of the claim. An application for leave to proceed has now been made by Born Free Investments 247.

30 I have applied for consolidation of the two pending actions referred to in 28 and 29, on the grounds that Rockland Asset Management and Consulting (Pty) Ltd will only have funds with which potentially to pay the rental claim of Born Free Investments 247 (Pty) Ltd, should that claim succeed, if Rockland Asset Management and Consulting (Pty) Ltd succeeds with its loan claim against Rockland Group Holdings (Pty) Ltd.

31 Rockland Group Holdings (Pty) Ltd has made an application under section 5(9) of the Financial Institutions (Protection of Funds) Act 28 of 2001 for the cancellation of my various curatorship appointments. Both the Financial Section Conduct Authority (formerly the FSB) and I oppose the application. I submit that the principal effect of the relief that is sought, should it be granted, would be to undermine the very purpose for which, some seven years ago, the FSB applied for the appointment of a curator and this Honourable Court made such an appointment. It would deny the pension funds the redress to which they are legally entitled such as the judgment handed down on 2 April 2019 (see 27 above).

Costs of the Curatorship - paragraph 4.5

32. The paid costs of the curatorship since 1 January 2019 to 31 December 2019 are as follows:

32.1	Curator's fees and disbursements	R1 122 420
32.2	cost of travel for Mr H Griffiths and curator to Investors' Committee meetings and boardroom rental	R62 033
32.3	legal fees and disbursements in respect of the claims	R1 150 246
32.4	accounting and administrative assistance	R683 451
32.5	the cost of hiring offices and incidental services	R329 263
32.6	tax, actuarial and other consultants	R69 000
32.7	audit fees for Rockland Asset Management and Consulting (Pty) Ltd and for the two Trusts	R436 235
	Total	<u>R3 852 648</u>

33. Full details of the amounts expended have been provided to the FSB.

34. The costs of the curatorship from inception to 31 December 2019 amounts to R35.2 million. The Investors have made contributions to finance the curatorship (including in respect of the property companies) of R14 million in 2017 and R10 million in 2019.

35. In addition to the costs of administering the curatorship and the property companies referred to in paragraph 34, I disbursed funds of the investors

for audits of and for management and maintenance of the companies that are held as investments and for their assets. These costs were mainly in respect of the rates and taxes, maintenance and development of the Oakland City properties. Such costs were not incurred as direct part of the curatorship but making payment thereof does fall within the scope of the management functions. This was done in conjunction with the Investors' Committee, which is provided with cost and cash flow information applicable to the investment of the Investors on a monthly basis. In 2019 such costs amounted to R 6 948 780.

My recommendations – paragraph 4.6

36. I have no recommendations to change the present arrangements. Furthermore in the light of the present stage of the curatorship and expected developments, I propose that, as was required for this report, I next report to the Court in 12 months.

Conclusion

37. The position of the Curatorship remains that, although the responsibilities for the Oakland City development lies with the Board of Directors of Oakland City Development Company (Pty) Ltd, I remain ultimately responsible as curator of Rockland Property Investment Fund which holds the majority shares in this company. The Oakland City development is a huge development requiring funding from the Rockland entities from funds provided by the investors.

38. I am dealing with the claims and litigation dealt with above where I am a party *nomine officio*. I am a member, in my official capacity, of the Investors' Committee. The Investors' Committee meets regularly and is functioning effectively.

39. The other functions and actions performed and undertaken by me are mainly managerial relating to:

39.1 payments;

39.2 accounting;

39.3 dealing with the remaining assets and matters incidental thereto;
and

39.4 dealing with the auditors to ensure that audits of the Curatorship functions of the businesses of the Rockland entities under Curatorship be completed.

40. I therefore submit with respect that the curatorships should continue.



F D Kriel

28 January 2020