

**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**

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)

NINTH PROGRESS REPORT - JANUARY 2019

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 The FSB has since been replaced by the Financial Sector Conduct Authority but for convenience and clarity I continue to refer to it as the FSB.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 and 31 January 2018.
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 Asset Management and Consulting (Pty) Ltd administers the other two businesses for which it is paid fees;

- 5.2 Rockland Targeted Development Investment Fund is a bewind trust that holds assets on behalf of five investors that are all registered pension funds. The main remaining investment is in Rockland Property Investment Fund; and

- 5.3 Rockland Property Investment Fund is also a bewind trust and holds 80% of the shares of Oakland City Development Company (Pty) Ltd which owns a large property on the Cape Flats.

6. In terms of the Order of Court dated 6 December 2012 an Investors' Committee was established, 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 remained unaltered. 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.

Court order of 21 February 2018

8. Pursuant to paragraph 4 of the Order of the Court issued on 21 February 2018, I deal with the matters set out therein in the same sequence hereunder.

The status of the Curatorship as at 31 December 2018 – paragraph 4.1

9. 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.
10. 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.

11. 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. 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, Philippi Horticultural Area Food and Farming Campaign and Mr N A Sondag applied for the review of various rights granted in respect of the 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.
12. The only other remaining investment is a share investment with its ultimate holding in Sasol. This is partially subject to a time linked restriction that will run out in 2028 and partially capable of disposition to BEE qualified purchasers.
13. I am engaged in litigation as set out below.
14. 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.

15. 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

16. 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.
17. 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.
18. The fixed property of C-Max Investments 300 (Pty) Ltd was sold. It wholly owned a 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.
19. The Aspen share investment was in 2015 realised in terms of a complicated disinvestment. The proceeds were transferred to the investors as direct shareholdings in Aspen and 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.

20. 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 12.

21. The distributions made to investors to date equal 80% of the total amounts invested by them in the Rockland entities. The remaining assets are estimated to have values exceeding the balance of the investment amounts.

Irregularities – paragraph 4.3

22. I have not established any further irregularities other than those previously reported on. 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 - paragraph 4.4

23. I have instituted four actions and one action has been instituted against me – the details of which are more fully set out hereunder.

24. I instituted action under case number 15341/2013 for orders for the transfer 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.
25. 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.
26. 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. Judgement is awaited.
27. 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 on 28 April 2018. Consequently the pre-trial hearings have had to be postponed many times but I understand that a date of hearing may be allocated in the near future.

28. 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. The Pleadings have closed. 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 has now applied to the Supreme Court of Appeal for special leave to appeal and is to be heard on 8 March 2019.

Costs of the Curatorship - paragraph 4.5

29. The paid costs of the curatorship since 1 January 2018 to 31 December 2018 are as follows:

29.1 Curator's fees and disbursements	R1 099 805
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29.2	cost of travel for Mr H Griffiths and curator to Investors' Committee meetings and boardroom rental	R145727
29.3	legal fees and disbursements in respect of the claims	R2 549 029
29.4	accounting and administrative assistance	R527 644
29.5	the cost of hiring offices and incidental services	R82 239
29.6	tax, actuarial and other consultants	R162 715
29.7	audit fees for Rockland Asset Management and Consulting (Pty) Ltd and for the two Trusts	R482 915
	Total	<u>R5 050 773</u>

30. Full details of the amounts expended have been provided to the FSB.
31. The total costs of the curatorship from inception on 20 August 2012 to 31 December 2018 amount to R31.4 million. This may be compared to the approximately R32 million management fees that would have been payable for this period in terms of the investment mandate agreements entered into by the investors. However, I point out that I also from inception expended R18 million for management costs for the property companies owned by the trusts under curatorship. Such costs were not incurred as direct part of the curatorship but making payment thereof does fall within the scope of the management functions that Rockland Asset Management and Consulting (Pty) Ltd provides and carries the approval of the Investors' Committee.
32. In addition to the costs of administering the curatorship and the property companies referred to in paragraph 31, I disbursed funds of the investors

for audits of and for the management and maintenance of the companies that are held as investments and for their assets. These costs were mainly in respect of maintenance and development of the Oakland City properties. 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.

My recommendations – paragraph 4.6

33. 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

34. 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.
35. I am dealing with the claims 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.

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

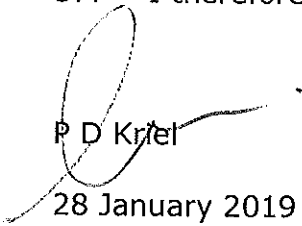
36.1 payments;

36.2 accounting;

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

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

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



P D Krjel

28 January 2019