

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

ROCKLAND TARGETED DEVELOPMENT INVESTMENT FUND

(Registration No. IT4321/2004)

PROGRESS REPORT MAY 2013

1. Requirements of the Court Order

Pursuant to paragraph 7 of the Order of the Court issued on 6 December 2012, I deal with the matters set out therein seriatim (and with sub-numbers where appropriate):

7.1 The status of the curatorship as at 30 April 2013 is that progress has been made since the Order referred to above in that:

7.1.1 the factual findings made in my Initial Report have been considered and formulated as potential legal claims against various of the persons mentioned in the said Report (see also 7.4 below);

7.1.2 I am in a position to transfer the shares of Rapicorp 122 (Pty) Ltd, Rapicorp 123 (Pty) Ltd and C-Max Investments 300 (Pty) Ltd (holding the fixed properties) as assets to the investors or an authorised asset manager on their behalf should the Court approve such transfer taking into account the further details set out hereunder;

7.1.3 accounting of the businesses under my curatorship has been brought up to date and KPMG have been appointed as auditors for these businesses and such companies fully controlled by the

businesses (i.e. excluding minority share investments in other companies); and

7.1.4 the Investment Committee established in terms of paragraph 3.1 of the said Order has met on several occasions and decisions in respect of the businesses and the assets have been taken.

7.2 The shareholding in Nelco Furniture Manufacturers (Pty) Ltd has not been disposed of as the prospective purchaser, Rockland Group Holdings (Pty) Ltd appears to wish to deal with it at the same time as a possible settlement of the claims against it. No other possible buyer has been identified.

7.3 I have not established further irregularities other than those previously reported on. As is set out below investigation into the accounting records is continuing.

7.4 I report that:

7.4.1 The investors decided to first attempt to resolve the claims by negotiation and therefore no civil actions have yet been instituted. Should the negotiations fail, I shall institute civil

actions including arbitration and applications by notice of motion where appropriate.

7.4.2 The arbitration proceedings involving Fifth Respondent has been held in abeyance by the parties involved therein (as the Investors hold a minority share they are not directly involved therein) and I have been involved in discussions to resolve the issue by an amendment to the applicable agreement.

7.5 In respect of paragraph 7.5:

7.5.1 I recommended to the Registrar that the shares in Rapicorp 122 (Pty) Ltd and Rapicorp 123 (Pty) Ltd and C-Max Investments 300 (Pty) Ltd be transferred to the investors who are the ultimate owners thereof in terms of the Trust Deeds of Rockland Targeted Development Investment Fund and Rockland Property Investment Fund. I made this recommendation as it does not appear to me as if the underlying assets of these companies are relevant to any of the claims against third parties, although the shares in the companies were transferred in a manner which led to the claims arising. However, the present shareholding of such shares does not in my view affect the claims arising from prior transactions in such shares. The Registrar agreed with this recommendation but I do not yet ask the Court for approval of

such transfers pending decisions by the investors how they intend to manage such assets in the light of the rules and regulations controlling pension fund investments and the possible effect of such transfers on the claims.

7.5.2 I carefully considered and discussed with the Registrar the possibility of regularising the collective investment scheme business of the entities referred in paragraph 7.5 of the Order. In this regard the provisions of paragraph 3.2 of the Order are also relevant. I concluded that:

7.5.2.1 I cannot change the Trust Deed of Rockland Targeted Development Investment Fund as I have no control thereover, being only the Curator of the former business thereof.

7.5.2.2 My function as curator is to act in the best interests of the investors in respect of their investments, with a view to ultimately giving back to the investors their investments or the assets purchased by the monies invested by them. This I have already set in motion as set out 7.1.2 and 7.5.1. It does not appear to me that this process requires or enables the setting up by me of a collective

investment scheme under curatorship, but rather that I must deal with the assets in accordance with the Court Order and the Act under which it was issued.

7.6 In respect of 7.6:

7.6.1 The costs of the curatorship as at 30 April 2013 are as follows:

7.6.1.1	my fees and disbursements in respect of copies, printing, travelling etc. - -	R1 440 520.53
7.6.1.2	legal fees for assistance in investigating the affairs and preparing the reports -	R643 216.50
7.6.1.3	legal fees in respect of the claims -	R131 160.99
7.6.1.4	accounting and administrative assistance-	R148 067.70
7.6.1.5	since March 2013, the cost of hiring offices and incidental services -	<u>R7 162.48</u>
	Total	R2 370 128.20

I point out that the fees in terms of the Trust Subscription Agreements between the investors and Rockland Asset Management and Consulting (Pty) Ltd in this period amounted to **R9 277 276.30** 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 for the reasons set out below.

7.6.2 Full details of the amounts expended have been provided to the Registrar.

7.6.3 I point out that in respect of Rapicorp 122 (Pty) Ltd, Rapicorp 123 (Pty) Ltd, Blue Nightingale Trading 169 (Pty) Ltd and C-Max Investments 300 (Pty) Ltd disbursements were incurred in respect of legal advice and consultants which are not included above inasmuch as those disbursements accrue in the normal course of events for the expense of these companies.

7.6.4 The expenses of the curatorship have been paid from the assets of the business of Rockland Asset Management and Consulting (Pty) Ltd which recovers fees from the business of Rockland Targeted Development Investment Fund for its management thereof. This arrangement has been kept in place from the

Inception of the curatorship due to the effect of the agreement referred to in paragraph 4.1 of the Order which, as contemplated in paragraph 4.2.3 of the Order, requires that the management agreement must remain in place.

2. Assistance to the Curator

As it became apparent that the investors, being pension funds under the control of the Registrar of Pension Funds, require specific reporting of the value of assets in which they invested, I asked the Registrar for instructions as to whether I must comply with these requirements and he instructed that I should do so. Apart from accounting to the investors in respect of the value of their investments, I was also asked for cash flow details and other accounting matters for which I had not made administrative provision. Therefore, after consultation with the Registrar, I appointed Mr Horton Griffiths to assist me with such accounting and reporting functions and also in respect of calculation of the claims. Mr Horton Griffiths has since 1990 performed management functions for the Masterbond curatorships and has himself been appointed as a curator by the Court. He is a chartered accountant with extensive experience of forensic accounting and investigations. I have asked him to further investigate the accounts to establish if there are contraventions or transgressions recorded in the accounts not previously found.

3. Schaap Kraal

The property belonging to Rapicorp 122 (Pty) Ltd and Rapicorp 123 (Pty) Ltd constitutes the largest investment under curatorship. It is presently agricultural land and has been incorporated within the urban edge of Cape Town. Applications for development of the land for township and other commercial uses are in progress. When I was appointed as curator a group of consultants were under contract to render professional services in this regard. I decided that their appointments should continue as it would have had detrimental effects on the properties had I terminated these arrangements. Likewise I continued with arrangements in respect of protection of the properties against removal of sand and from invasion thereof.

I found that a large part of my time was required to manage matters relating to this property. After it became clear to me that I had no reason to believe that any of the claims arose from the own affairs of the companies owning the properties, I asked the Registrar to instruct me whether I could transfer the shares in the companies to the investors as has been outlined above. Pending finalisation of such transfer or implementation of another structure which complies with the requirements of investment in property by pension funds (taking into account the fact that this is in effect a township development

Investment), the investors' committee has put in place management for the running of the affairs of the companies and development of the properties by acquiring the appropriate rights and the further development thereof.

4. C-Max Investments 300 (Pty) Ltd

As in the case of the Schaap Kraal development, the property of this company requires administration by a property expert and the investors have appointed a person to attend thereto on their behalf. Accordingly my administrative functions will fall away once this is put in place.

5. Further curatorship

The business of Rockland Targeted Development Investment Fund is the only beneficiary of Rockland Property Investment Fund (which is also a trust). This trust is the owner of approximately 80% of the shares in Rapicorp 122 (Pty) Ltd and Rapicorp 123 (Pty) Ltd. This trust also has substantial claims against various persons involved with the management of the shares in these companies and which claims I intend to pursue as set out above – including a claim for the balance of the shares in the companies (see paragraphs 31, 34.8 and 34.9 of my Report of 2 October 2012 in this regard). However, I have been

advised that it would be difficult, if not impossible, to take steps on behalf of the trust in terms of the present Orders and that it would be desirable for the business of this trust to also be placed under my curatorship. I accordingly reported as contemplated in paragraph 5.13 of the Order of Court of 20 August 2012 to the Registrar that he should consider appointing me as curator of the business of this trust as well. I submit that it would be in the interests of the investors and the businesses of which I am already a Curator, that I so be appointed.

6. The future

The main thrust of my activities in the future will be to resolve by negotiation and/or litigation the claims to which I have made reference above. This may take a considerable period of time if resort has to be had to litigation.

Once the administration in respect of the properties has been transferred as is contemplated above, the remainder of my administration will be in respect of the share and debenture investments until such time as the debentures become repayable and the shares may be dealt with without the present restrictions. Such restrictions will lapse with the effluxion of time unless I am able to reach agreement to amend them suitably.

A handwritten signature in black ink, appearing to be 'P D Kriel', written in a cursive style.

P D Kriel

28 May 2013