STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

ORDER NO. 18-161-S

IN THE MATTER OF:

HARLEY SUNDOWN

ORDER TO CEASE AND DESIST,
IMPOSING CIVIL PENALTIES
AND
CONSENT TO ORDER

Respondent.

The Director of the Department of Commerce, Community, and Economic
Development, Division of Banking and Securities (“Administrator”), has conducted an
investigation into certain activities of Harley Sundown (“Respondent”), and has determined
that Respondent violated certain provisions of the Alaska Native Claims Settlement Act
Corporations Proxy Solicitation and Stock Act, Alaska Statute (AS) 45.55 et seq. (“ANCSA
Proxy Solicitations Act”).

Respondent agrees that the Administrator has jurisdiction over Respondent and these
matters pursuant to the ANCSA Proxy Solicitations Act.

Respondent wishes to resolve and settle this matter with the Administrator. As
evidenced by the authorized signature on this Order, Respondent consents to the entry of this
Order based on the Conclusions of Law and Order. Respondent waives his right to appeal
under AS 45.55.920(d).

I. FINDINGS OF FACT

1. Respondent is a shareholder of Calista Corporation (“Calista”).

2. Calista is organized pursuant to the Alaska Native Claims Settlement Act
3. Calista has certified to the Administrator that it has more than 500 shareholders and total assets exceeding $1,000,000.

4. The former Chairman of Calista’s Board of Directors (the “Former Chairman”) was elected to Calista’s Board of Directors on July 9, 2016, and was appointed board chair on July 27, 2017.

5. On March 9, 2018, six directors, constituting a majority of Calista’s Board of Directors (the “Majority”) voted to remove the Former Chairman as board chair. The vote occurred after Calista’s Corporate Governance, Employee & Compensation Committee determined that the Former Chairman interjected himself into Calista’s investigation of “Employee A.” Employee A is a former Calista employee who Calista terminated on November 15, 2017 after Calista investigated Employee A for possible sexual harassment.

6. On or about May 2018, Respondent published a series of posts to his Facebook account.

7. Respondent’s Facebook posts stated: “[T]hey align themselves to protect a sexual harasser . . . .” The posts further stated: “When [the Former Chairman] was elected board [sic], somehow, the outgoing chairman selected who would serve on the committees . . . [T]his is normally the new board chairs [sic] prerogative to name who sits on the committees.”

8. Respondent stated to the Administrator that the individual he referred to as a “sexual harasser” in his Facebook posts is Employee A.

9. Respondent stated to the Administrator that Respondent was referring to the Majority’s vote to remove the Former Chairman as board chair when Respondent stated in his Facebook post that “the[y] align themselves to protect a sexual harasser . . . .”
10. Respondent did not file the Facebook posts with the Administrator.

11. Respondent did not file with the Administrator a dated, written proxy statement containing the disclosures required under 3 AAC 08.355.

12. Calista’s bylaws require committee appointments to be made by vote of Calista’s entire board, and do not grant Calista’s board chair authority to make committee appointments.

13. Calista’s entire Board of Directors appointed committee members after both the Former Chairman’s election to Calista’s Board of Directors and his appointment as board chair.

14. Calista terminated Employee A before the Majority voted to remove the Former Chairman as board chair.

15. Respondent stated to the Administrator that the purpose of the Majority’s vote to remove the Former Chairman as board chair was not to protect Employee A.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the filing requirements of AS 45.55.139 because he is a shareholder of Calista and Calista is subject to the filing requirements.

2. Respondent’s Facebook posts are “proxy statements” as defined in 3 AAC 08.365(14) because they are a communication made available to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

3. Respondent violated 3 AAC 08.307 by failing to file his proxy statement concurrently with the Administrator when he distributed it to shareholders.

4. Respondent violated 3 AAC 08.315(a) by materially misrepresenting Calista’s board chair may appoint directors to committees, that the outgoing board chair made committee appointments when the Former Chairman was elected to the board, and that the purpose of the Majority’s vote to remove the Former Chairman as board chair was to protect Employee A.
5. Respondent violated 3 AAC 08.355 by failing to file with the Administrator required disclosures relating to proxy solicitation.

6. Respondent is subject to a civil penalty pursuant to AS 45.55.920(c) because he violated 3 AAC 08.307, 3 AAC 08.315(a), and 3 AAC 08.355.

III. ORDER

Pursuant to AS 45.55.920, and on the basis of the Findings of Fact and Conclusions of Law, the Administrator ORDERS Respondent to:

1. CEASE AND DESIST from violating the ANCSA Proxy Solicitations Act.

2. Comply with all provisions of the ANCSA Proxy Solicitations Act and associated regulations.

3. Pay a civil penalty in the amount one thousand five hundred dollars ($1,500), with one thousand five hundred dollars ($1,500) suspended for a period of five years from the date of this order. If Respondent commits any violation of the ANCSA Proxy Solicitations Act during this period, the suspended portion of the civil penalty will be immediately due.

This Order is a publicly disclosable document.

IT IS SO ORDERED.

Julie Anderson, Commissioner
Department of Commerce, Community and Economic Development

DATED: 8/2/2019

/s/ Patrice Walsh
BY: Patrice Walsh, Director
Division of Banking and Securities
Consent to Entry of Order

I, Harley Sundown, state that I have read the foregoing Order, that I am aware of the right to a hearing and appeal in this matter and have waived the same.

I admit to the jurisdiction of the Department of Commerce, Community and Economic Development, Division of Banking and Securities (“Department”) and further consent to entry of this Order by the Department as settlement of the issues contained in this Order. I admit to violation of the ANCSA Proxy Solicitations Act.

I understand that the Department reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the ANCSA Proxy Solicitations Act, and that I will fully comply with the terms and conditions of this Order, the ANCSA Proxy Solicitations Act and associated regulations.

I enter into this Order voluntarily and understand that this Order is a public document.

July 30, 2019

Date

/s/ Harley Sundown

Harley Sundown

SUBSCRIBED AND SWORN TO before me this 30th day of July, 2019 at City of Scammon Bay, Alaska.

/s/ Jessica Hunter

Notary Public in and for Alaska

Jessica Hunter

Notary Printed Name

My commission expires: 11/1/2020

Contact Person:
Adam Marks
Financial Examiner

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