



Ontario
Securities
Commission
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Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor CP 55, 19^e étage
20 Queen Street West 20, rue queen ouest
Toronto ON M5H 3S8 Toronto ON M5H

Direct (416) 351.2772
Facsimile (416) 351.9196
E Mail hdaley@wdbblaw.ca

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

IN THE MATTER OF JBI, INC., and JOHN W. BORDYNUIK

**SETTLEMENT AGREEMENT
OF JOHN BORDYNUIK**

PART I - INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of the Respondent, John W. Bordynuik ("Bordynuik" or, alternatively "the Respondent").

PART II – JOINT SETTLEMENT AND RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated April 3, 2014, ("the Proceedings") against the Respondent, in accordance with the terms and conditions set out in Part V of this settlement agreement. Bordynuik agrees to the making of an order against him in the form attached as Schedule "A" on the basis of the facts set out below.

3. This Settlement Agreement, including the attached Schedule "A" (collectively, the "Settlement Agreement"), will be released to the public only if and when the Settlement Agreement is approved by the Commission.

4. Bordynuik admits the facts set out in Part III and the conclusion in Part IV of this Settlement Agreement solely for the purpose of this Proceeding. Staff and Bordynuik agree that this Settlement Agreement and the facts and admissions set out herein are without prejudice to Bordynuik and/or JBI Inc. (“JBI”) in any other proceedings of any kind including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings currently pending or that may be brought by any person, corporation or agency, whether or not this Settlement Agreement is approved by the Commission. Without limiting the generality of the foregoing, Bordynuik expressly denies that this Settlement Agreement is intended to be an admission of civil or criminal liability and expressly denies any civil or criminal liability.

PART III – AGREED FACTS

A. OVERVIEW

5. During the years 2008 to 2011 (the “Distribution Period”) Bordynuik raised money for JBI and/or its predecessor entities.

6. In doing so he caused JBI to raise a total of approximately \$11.2 million U.S. from 433 Ontario investors through activities which breached Section 53 of the *Act* and which were not in compliance with Ontario securities law.

7. During part of the Distribution Period, Bordynuik caused to be prepared and signed financial statements of JBI in which JBI’s financial position was misstated by approximately \$10 million as a result of attributing an excessive value to one of the company’s assets, namely certain media credits. This misstatement was first made in JBI’s third quarter financial statements for the quarter ended September 30, 2009 and contained in its Form 10-Q. It was repeated in JBI’s 2009 year-end financial statements contained in its Form 10-K for the year ended December 31, 2009. Both documents were filed with the Securities Exchange Commission (“SEC”) and are collectively referred to as “the Financial Statements”.

8. JBI reported in the Financial Statements that it owned media credits having a valuation of \$9,997,134. This valuation was erroneous, and was not in compliance with Generally Accepted Accounting Principles or “GAAP”.

9. Bordynuik certified that, based on his knowledge, the Financial Statements fairly presented in all material respects the financial condition of the registrant, JBI. In fact the Financial Statements did not do so.

10. Monies were raised from Ontario investors during the time that the Financial Statements contained the erroneously high valuation for the media credits.

11. The media credits were eventually written off in their entirety in JBI's amended form 10-K filed on July 9, 2010. The proper valuation of the media credits under GAAP was nil.

12. While Bordynuik was raising funds on behalf of JBI, he established a trust for the benefit of his two minor children (the "Childrens' Trust"), which was subject to a formal trust agreement.

13. Bordynuik caused shares of JBI or John Bordynuik Inc. to be irrevocably settled on his mother as trustee of the Childrens' Trust. The Childrens' Trust held those shares in a securities account at RBC Dominion Securities ("DS").

14. Having irrevocably settled JBI shares in trust Bordynuik then directed his mother as trustee to transfer the shares out of the trust account at DS to a number of transferees whom he designated, contrary to the terms of the formal agreement governing the Childrens' Trust.

15. Bordynuik adopted this practice, which violated the terms of the Childrens' Trust, so as to put free trading and not restricted stock, in the hands of third parties.

16. Bordynuik used the Childrens' Trust in part as a reservoir of JBI shares which could be distributed to others, including Bespoke Growth Partners, in aid of acquiring a listing on the AMEX or NASDAQ exchanges. Bordynuik's misuse of the Childrens' Trust for this purpose was conduct contrary to the public interest.

B. BACKGROUND

17. Bordynuik is an individual residing in the Province of Ontario. Bordynuik has never been registered by the Commission in any capacity.

18. JBI was formerly known as 310 Holdings Inc., and was incorporated in the State of Nevada on April 20, 2006.

19. Bordynuik bought 63% of the issued and outstanding shares of 310 Holdings Inc. on April 24, 2009.

20. Bordynuik was thereafter appointed President, CEO and CFO of 310 Holdings Inc.

21. On July 15, 2009, 310 Holdings Inc. purchased the assets of John Bordynuik Inc.
22. Effective October 5, 2009, 310 Holdings Inc. changed its name to JBI, Inc. (“JBI”). Bordynuik was the CEO and CFO of the newly named company. He remained CFO until January 1, 2010.
23. JBI is quoted on the OTCQB Marketplace, which is operated by OTC Markets Group. JBI and its predecessor entities have been SEC reporting companies since 2006.
24. JBI’s fiscal year ends on December 31.

**C. VIOLATION / CONDUCT
THE ILLEGAL DISTRIBUTIONS CONTRARY TO SECTION 53 OF THE ACT**

The Distribution During 2008

25. During 2008 Bordynuik distributed securities of JBI or John Bordynuik Inc. to residents of Ontario without a prospectus as required by Section 53(1) of the *Act*.
26. In documents filed with the Commission Bordynuik purported to rely on exemptions for the 2008 distributions, namely the accredited investor exemption and the family, friends and business associates exemption.
27. The distribution in 2008 raised roughly \$2.9 million from approximately 204 Ontario investors. The 2008 distribution was contrary to Ontario securities law for the following reasons:
 - (a) The family, friends and business associates exemption does not apply to a trade in securities in Ontario hence was not an available exemption;
 - (b) It appears that the majority of the Ontario investors were not in fact accredited investors. Bordynuik’s reliance upon that exemption was inappropriate.
28. The 2008 distribution of John Bordynuik Inc. shares were accordingly an illegal distribution insofar as it was marketed and sold to Ontario investors, contrary to Section 53 of the *Act*.

The PIPE Transactions

29. The acronym “PIPE” stands for Private Investment in Public Equity. In the United States a PIPE offering may be registered with the SEC or may be completed as an unregistered private offering.

30. Bordynuik caused JBI to raise money through four PIPE offerings and in each of the four PIPE offerings shares were marketed and sold to Ontario residents. The particulars are set out below.

31. The first PIPE offering was at \$0.80 per share and took place from December 2009 through January 14, 2010. In the first PIPE offering Bordynuik assisted in the marketing and sale of shares to 176 Ontario residents and raised \$4,105,000 US in proceeds from those Ontario investors. The first PIPE offering was made without a prospectus or offering memorandum and there was no exemption available. Bordynuik did not purport to claim any exemption on behalf of JBI. The distribution to Ontario investors during the first PIPE offering was contrary to Section 53 of the *Act*.

32. The second PIPE offering took place in May 2010. Bordynuik caused JBI to distribute its shares at \$4.00 per share during the second PIPE offering and he caused JBI to market and sell shares to 40 Ontario investors who paid in aggregate \$1,734,000 U.S. The second PIPE offering was made without a prospectus or offering memorandum and there was no exemption available. Bordynuik did not purport to claim any exemption on behalf of JBI. The distribution to Ontario investors during the second PIPE offering was contrary to Section 53 of the *Act*.

33. In December 2010 Bordynuik caused JBI to carry out the third PIPE offering, this time offering shares of JBI at \$0.50 per share. A total of 6 Ontario investors participated in the third PIPE offering. A total of \$1,215,000 US was raised from these 6 Ontario investors. There was no prospectus or offering memorandum during the third PIPE offering. There was no exemption available and Bordynuik did not purport to claim any exemption on behalf of JBI. The distribution to Ontario investors during the third PIPE offering was contrary to Section 53 of the *Act*.

34. Bordynuik caused JBI to undertake a fourth PIPE offering in April 2011. At this time JBI offered its shares for sale at \$0.70 per share. In the fourth PIPE offering the company marketed and sold its shares to 52 Ontario residents and raised a total of \$1,215,000 US from Ontario investors. No prospectus or offering memorandum was provided in connection with the fourth PIPE offering. No exemption was available with respect to sales to Ontarians within that PIPE offering. Bordynuik did not purport to claim any exemption on behalf of JBI. The distribution to Ontario investors during the fourth PIPE offering was contrary to Section 53 of the *Act*.

**D. VIOLATION / CONDUCT
THE MISLEADING FINANCIAL STATEMENTS CONTRARY TO SECTION 126.2 OF
THE ACT**

35. On or about August 29, 2009 JBI's predecessor entity 310 Holdings Inc. purchased 100% of the issued and outstanding shares of Javaco Inc., a wholly owned subsidiary of Domark International ("Domark").

36. In a separate agreement Domark's CEO assigned media credits purportedly representing \$9,997,134 worth of prepaid print and radio ads to 310 Holdings Inc. to be used for marketing and advertising.

37. In exchange for the assignment of the media credits, 310 Holdings Inc. on August 24, 2009 issued one million shares of its own common stock to Domark, valued at \$1.00 per share or \$1 million dollars in total.

38. On October 5, 2009 310 Holdings Inc. changed its name to JBI and Bordynuik assumed the role of CEO and CFO of JBI. On January 1, 2010 Ronald Baldwin Jr. was appointed CFO of JBI.

39. The company's third quarter ended on September 30, 2009. Financial statements for the company for the period ended September 30, 2009 were included with the Form 10-Q which the company filed with the SEC on November 16, 2009.

40. In the above financial statements JBI reported the media credits purchased from Domark as an asset of the company at their purported face value of \$9,937,134. This valuation was contrary to GAAP. Bordynuik as CEO certified that, based on his knowledge, the financial statements fairly presented in all material respects the financial condition of JBI. The financial statements were not in fact GAAP-compliant as a result of the valuation applied to the media credits.

41. JBI's year end was December 31, 2009 and the company filed its 2009 year-end financial statements with its Form 10-K on March 31, 2010. JBI's 2009 year-end financial statements also valued the media credits at \$9,997,134, contrary to GAAP.

42. As CEO, Bordynuik certified that the year-end financial statements fairly presented in all material respects the financial condition of JBI. In fact the year-end financial statements were not GAAP-compliant in respect of the media credits valuation.

43. On May 21, 2010 JBI filed a Form 8-K stating that the previously issued financial statements referenced above should not be relied upon due in part to questions about the valuation of the media credits.

44. On July 9, 2010 and on November 17, 2010 JBI issued two financial statement restatements. In those restatements JBI wrote down the media credits to zero and disclosed that the credits had previously been valued improperly.

45. Between November 16, 2009 and the eventual correction of the misrepresentation in July 2010, Bordynuik caused JBI to raise money from the public through two PIPE offerings. The May 2010 PIPE offering was at \$4.00 per share, a valuation which was premised in part on the erroneous value that had been attributed to the media credits.

46. By virtue of JBI having represented the media credits as being worth \$9,997,134 when the true value of that asset was nil, Ontario investors who purchased during the first and second PIPE offerings may have been misled about the value of JBI. Bordynuik states that he acted in good faith in signing and certifying the Form 10-Q and 10-K referred to in paragraphs 39 and 41 respectively, but acknowledges that he ought reasonably to have known that the media credit valuation was unreliable. Bordynuik acknowledges that his actions in this respect were contrary to Section 126.2 of the *Act*.

**E. VIOLATION / CONDUCT
MISUSE OF THE CHILDRENS' TRUST ACCOUNT CONTRARY TO SECTION 127**

47. On or about July 6, 2007 Bordynuik and others executed a document entitled "1683091 Trust Agreement".

48. The Childrens' Trust (previously defined in paragraph 12), set up pursuant to the 1683091 Trust Agreement, appears to have been a trust established by Bordynuik for the purpose of functioning as a repository for shares which he wished to settle in trust for the benefit of his two children.

49. The July 6, 2007 agreement created a trust for Bordynuik's two children and provided that his mother was to manage the trust assets as trustee. Bordynuik settled shares of John Bordynuik Inc. upon the Childrens' Trust in trust for his children. The trust entity maintained an account with DS. The respondent's mother was the person authorized to give trading instructions on the Childrens' Trust account.

50. Pursuant to the Childrens' Trust agreement, shares deposited to the DS account were to be held in trust for the benefit of the two Bordynuik children.

51. The trust agreement and other trust documentation was filed with DS as part of the “Know Your Client” documents with respect to the Childrens’ Trust account at DS. The DS trust account initially held 6,000 shares of John Bordynuik Inc. On or about October 14, 2009 an additional share certificate representing 1 million shares of John Bordynuik Inc. was deposited to the trust account at DS.

52. On or about October 23, 2009, Bordynuik caused some of the shares represented by that certificate to be transferred to fourteen different transferees, none of whom were beneficiaries of the trust.

53. Again on December 10, 2009 Bordynuik caused 300,000 shares to be transferred improperly from the Childrens’ Trust’s account to the benefit of Bespoke Growth Partners. Bespoke Growth Partners was not a beneficiary of the Childrens’ Trust.

54. Bordynuik used the Childrens’ Trust account at DS as a reservoir of JBI shares which he then distributed to people who had provided services to or had been involved in or friendly to the company’s operations. Bordynuik undertook some of these activities in pursuit of JBI becoming up-listed on American exchanges. Bordynuik’s use of the trust account to deposit shares which were then transferred to third parties who were not beneficiaries of the Childrens’ Trust was improper and contrary to the public interest thereby justifying an Order under Section 127 of the *Act*.

F. MITIGATING FACTORS

55. Bordynuik states that he relied on the expertise of financial advisors, including JBI’s auditors, Domark’s prior valuation of the media credits, and representations by the vendor of the credits, in signing the Form 10-Q and original Form 10-K.

56. Bordynuik has no prior disciplinary record with the Commission.

57. Bordynuik has cooperated fully with Staff of the Commission.

58. Bordynuik has already incurred significant penalties related to the issue of the misleading financial statements, including a monetary payment and a prohibition from acting as a director or officer, as a consequence of SEC proceedings which were brought with respect to the financial misstatements referred to in Part C above.

PART IV - CONDUCT CONTRARY TO SECURITIES LAW AND/OR THE PUBLIC INTEREST

59. By engaging in the conduct above, Bordynuik admits and acknowledges that he contravened Ontario securities law in the following ways:

- a) During the Distribution Period, Bordynuik effected distributions of securities of JBI John Bordynuik Inc. when a preliminary prospectus and a prospectus in respect of such securities had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the *Act*;
- b) During the Distribution Period, Bordynuik signed and certified SEC filings containing JBI financial statements with respect to the quarter ended on September 30, 2009 and the 2009 year-end that were not compliant with GAAP, contrary to s. 126.2 of the *Act*, and acknowledges that the effect of so doing may have been to mislead Ontario investors;
- c) Bordynuik inappropriately utilized a trust account and trust arrangement to distribute shares of JBI in violation of the trust, contrary to the public interest and s. 127 of the *Act*.

PART V - TERMS OF SETTLEMENT

60. Bordynuik agrees to the following terms of settlement, to be set out in an order by the Commission pursuant to section 127(1) of the *Act*:

- a) pursuant to paragraph 7 of subsection 127(1) of the *Act*, Bordynuik shall forthwith resign any positions that he holds as an officer and/or director of any reporting issuer, as defined in the *Act*;
- b) pursuant to paragraph 8 of subsection 127(1) of the *Act*, Bordynuik is prohibited from becoming or acting as an officer and/or director of any reporting issuer, as defined in the *Act*, for 5 years, effective from the date of the order of the Commission approving the Settlement Agreement;
- c) prior to becoming or acting as an officer and/or director of any reporting issuer, as defined in the *Act*, Bordynuik will successfully complete the Partners, Directors and Senior Officers Course administered by the Canadian Securities Institute and report his completion thereof to the Commission;
- d) pursuant to paragraph 9 of subsection 127(1) of the *Act*, Bordynuik shall pay an administrative penalty in the amount of \$125,000 to be designated for allocation or for use by the Commission pursuant to subsection 3.4 (2)(b) of the *Act*;
- e) Bordynuik shall contribute \$45,000 towards Staff's investigation costs in this matter; and
- f) pursuant to paragraph 6 of subsection 127(1) of the *Act* Bordynuik shall be reprimanded by the Commission.

61. Bordynuik agrees to attend in person at the hearing before the Commission on a date to be determined by the Secretary to the Commission to consider the Settlement Agreement, or such other date as may be agreed to by the parties for the scheduling of the hearing to consider the Settlement Agreement.

PART VI - STAFF COMMITMENT

62. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under Ontario securities law against Bordynuik or JBI in respect of the facts set out in this Settlement Agreement, subject to the provisions of paragraph 67 below.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

63. Approval of this Settlement Agreement shall be sought at a hearing of the Commission scheduled on a date agreed to by Staff and Bordynuik.

64. Counsel for Staff or for Bordynuik may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and Bordynuik agree that the Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing, unless the parties later agree that further evidence should be submitted at the Settlement Hearing.

65. If the Settlement Agreement is approved by the Commission, Bordynuik agrees to waive his right to a full hearing, judicial review or appeal of the matter under the *Act*.

66. Staff and Bordynuik agree and undertake that if the Settlement Agreement is approved by the Commission, they will not make any statement inconsistent with the Settlement Agreement.

67. If this Settlement Agreement is approved by the Commission and, at any subsequent time, Bordynuik fails to honour any of the terms of settlement set out herein, Staff reserve the right to bring proceedings under Ontario securities law against Bordynuik based on, but not limited to, the facts set out in this Settlement Agreement, as well as the breach of the Settlement Agreement.

68. Whether or not the Settlement Agreement is approved by the Commission, Bordynuik agrees that he will not, in any proceeding, refer to or rely upon the Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART VII - DISCLOSURE OF SETTLEMENT AGREEMENT

69. The Settlement Agreement and its terms will be treated as confidential by Staff and Bordynuik until approved by the Commission, and forever if, for any reason whatsoever, the Settlement Agreement is not approved by the Commission, except with the written consent of Staff and Bordynuik, or as may be required by law.

70. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Commission.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

71. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

72. A facsimile copy of any signature shall be as effective as an original signature.

DATED this 28th day of January, 2014

“Rachel Michalek”

Witness

“John W. Bordynuik”

John W. Bordynuik

DATED this 28th day of January, 2014

“David Linder”

David Linder, Executive Director, Enforcement Branch, Alberta Securities Commission
As agent for the Ontario Securities Commission

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

IN THE MATTER OF JBI, INC., and JOHN W. BORDYNUIK

- and -

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO
SECURITIES COMMISSION AND JOHN W. BORDYNUIK**

**SCHEDULE "A"
ORDER
(Sections 127(1) and 127.1)**

WHEREAS on _____ the Ontario Securities Commission ("the Commission") issued a Notice of Hearing (the "Notice of Hearing"), pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders as specified therein against and respect of John W. Bordynuik ("Bordynuik");

AND WHEREAS Bordynuik entered into a Settlement Agreement with Staff of the Commission dated _____, 2014 (the "Settlement Agreement") in which Bordynuik agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated _____ subject to the approval of the Commission;

AND WHEREAS on _____, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Bordynuik;

AND UPON reviewing the Settlement Agreement, and the Notice of Hearing and the Statement of Allegations of Staff and upon hearing submission from counsel for Bordynuik and from Staff;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order pursuant to section 127(1) of the *Act*;

IT IS HEREBY ORDERED THAT:

- a) The Settlement Agreement is approved;
- b) pursuant to paragraph 7 of subsection 127(1) of the *Act*, Bordynuik shall forthwith resign any positions that he holds as an officer and/or director of any reporting issuer, as defined in the *Act*;
- c) pursuant to paragraph 8 of subsection 127(1) of the *Act*, Bordynuik is prohibited from becoming or acting as an officer and/or director of any reporting issuer, as defined in the *Act*, for 5 years, effective from the date of the order of the Commission approving the Settlement Agreement;

- d) prior to becoming or acting as an officer and/or director of any reporting issuer, as defined in the *Act*, Bordynuik will successfully complete the Partners, Directors and Senior Officers Course administered by the Canadian Securities Institute and report his completion thereof to the Commission;
- e) pursuant to paragraph 9 of subsection 127(1) of the *Act*, Bordynuik shall pay an administrative penalty in the amount of \$125,000 to be designated for allocation or for use by the Commission pursuant to subsection 3.4 (2)(b) of the *Act*;
- f) Bordynuik shall contribute \$45,000 towards Staff's investigation costs in this matter; and
- g) pursuant to paragraph 6 of subsection 127(1) of the *Act* Bordynuik is reprimanded by the Commission.

DATED at Toronto this day of , 2014.
