



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- and -

**IN THE MATTER OF
DEVENDRANAATH MISIR**

HEARING HELD PURSUANT TO SECTIONS 127 AND 127.1 OF THE ACT

SETTLEMENT HEARING RE: DEVENDRANAATH MISIR

HEARING: Monday February 23, 2009

PANEL: Wendell S. Wigle - Commissioner and Chair of the Panel
Margot C. Howard - Commissioner

APPEARANCES: Ian Smith - for Staff of the Ontario Securities Commission
Kathryn Daniels

David Steinberg - for Devendranauth Misir
John Adair

ORAL RULING AND REASONS

The following text has been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the decision.

Chair:

[1] This was a hearing under sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the “Act”) for the Ontario Securities Commission (the “Commission”) to consider whether it is in the public interest to approve a proposed Settlement Agreement between Staff of the Commission (“Staff”) and the respondent Devendranauth Misir (“Misir”).

[2] We have considered the submissions of Staff and counsel for Misir, and we have decided to approve the Settlement Agreement as being in the public interest. These are our oral reasons in this matter.

[3] The facts and circumstances agreed to by Staff and Misir are set out in the Settlement Agreement. These facts are not findings of fact by this Panel, rather, they are facts agreed to by Staff and Misir for purposes of this settlement. In approving the Settlement Agreement, we relied on the facts in the agreement and those facts represented to us at the hearing today (see: *Re Rankin* (2008), 31 O.S.C.B. 3303 at para. 5).

[4] This proceeding concerns Misir’s conduct in connection with advising on trades without being registered under section 25(1)(c) of the Act.

[5] Misir, a Toronto businessman and a lawyer, who has never been registered with the Commission in any capacity, was retained by two Lottery Winners. Misir acted as an “adviser” (as that word is defined in section 1(1) of the Act) to the Lottery Winners, giving advice to them with respect to the buying and selling of securities. As an adviser, the respondent was required to be registered under section 25(1)(c) of the Act unless his advising was “solely incidental” to his “principal occupation” as a lawyer under section 34 of the Act. Misir’s work as an adviser to the Lottery Winners did not fit within the language of the exemption and, as a result, the exemption available under section 34 of the Act did not apply.

[6] As set out in the Settlement Agreement, a civil action commenced by the Lottery Winners against Misir has been dismissed by Order of the Superior Court of Justice of Ontario, which order was made on consent without costs.

[7] We have been informed by Staff and counsel for Misir that the parties involved in the civil proceeding, which settled, take no issue with the Settlement Agreement brought before the Commission.

[8] By entering into the Settlement Agreement, Misir has recognized the seriousness of his conduct and that he breached section 25(1)(c) of the Act. He has accepted sanctions, including a reprimand, prohibition from acting as a director or officer, prohibition from acting as a registrant, an administrative penalty and costs.

[9] Before we go to our order, we would like to briefly refer to the law as it applies to the consideration of settlement agreements before the Panel.

[10] The Commission’s mandate in upholding the purposes of the Act, as set out in section 1.1 of the Act, is:

- (a) to provide protection to investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in the capital markets.

[11] The role of the Commission is set out in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611:

...the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing, we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be. ...

[12] We are guided by the sanctioning factors listed in *Re M.C.J.C. Holdings and Michael Cowpland* (2002), 25 O.S.C.B. 1133 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743, which Staff referred to in their submissions.

[13] In addition, appropriate sanctions need to take into account the specific circumstances of each case (*Re M.C.J.C. Holdings and Michael Cowpland, supra* at 1134-1135).

[14] In this case, we took into account the following mitigating factors as set out in the Settlement Agreement:

- (a) no issue is raised by the Commission with the nature or quality of the respondent's advice; and
- (b) a civil action commenced by the Lottery Winners has been dismissed by Order of the Superior Court of Justice for Ontario, which order was made on consent without costs.

[15] It was also established in *Re Sohan Singh Koonar et al.* (2002), 25 O.S.C.B. 2691, that the role of a Commission Panel in reviewing a settlement agreement is not to substitute its own sanctions for what is proposed in the settlement agreement. Instead, the Commission should ensure that the agreed sanctions in the settlement agreement are within acceptable parameters.

[16] This is what we as a Panel have done in approving this Settlement Agreement. In considering the respondent's position as stated in the Settlement Agreement, we are of the view that the sanctions set out in the Settlement Agreement are within the acceptable parameters.

[17] Therefore, we order that:

- (1) the Settlement Agreement attached to this Order is hereby approved;
- (2) pursuant to section 127 of the Act:
 - (a) Misir shall be reprimanded;

- (b) Misir shall be prohibited for a period of one year from becoming or acting as a director or officer of a registrant;
- (c) Misir shall be prohibited for a period of one year from becoming or acting as a registrant; and,
- (d) Misir shall pay an administrative penalty in the amount of \$3,000 to be paid to or for the benefit of third parties designated by the Commission, pursuant to section 3.4(2) of the Act and,

(3) pursuant to section 127.1 of the Act:

- (a) Misir shall pay costs of the investigation in the amount of \$3,000.

[18] In conclusion, we find that together, all the sanctions imposed in this matter provide adequate specific and general deterrence, which the Supreme Court has established is an important regulatory objective for securities commissions (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672). The sanctions strike a balance between the mitigating factors present in this case and the need for an order which will serve the preventive and protective objectives of the Act.

[19] We also note that both sides worked together to negotiate and narrow the issues in dispute.

[20] Though the regulatory sanctions agreed to in the Settlement Agreement may be below what we might have imposed after a hearing on the merits, we note this was not a hearing on the merits, this is a negotiated Settlement Agreement. We also recognize that Misir should be given credit for cooperation with Staff and that by settling, Commission resources have been conserved. Therefore, we find that the sanctions are acceptable and fall within acceptable parameters.

[21] Therefore, we approve the Settlement Agreement as being in the public interest.

[22] Mr. Misir would you please stand. Mr. Misir, by entering into the Settlement Agreement you have recognized that your conduct breached Ontario securities law by contravening section 25(1)(c) of the Act, and this is serious conduct that must not be repeated in the future.

[23] Mr. Misir you are hereby reprimanded by the Commission for your conduct.

Approved by the Chair of the Panel on March 5, 2009.

“Wendell S. Wigle”

Wendell S. Wigle