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Securities
Commission

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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
INNOVATIVE GIFTING INC., TERENCE LUSHINGTON,
Z2A CORP. and CHRISTINE HEWITT**

**REASONS AND DECISION
(Section 127 of the Act)**

Hearing: October 3, 4, 5, 6, 12 and 24, 2011
November 8, 2011
December 21, 2011

Decision: July 25, 2013

Panel: Paulette L. Kennedy - Commissioner

Appearances: Michelle Vaillancourt - For Staff of the Commission
Marc Boissonneault - For Z2A Corp. and Christine Hewitt

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REASONS AND DECISION

I. BACKGROUND

A. Introduction

[1] This was a hearing (the “**Merits Hearing**”) before the Ontario Securities Commission (the “**Commission**”) pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) to consider allegations made against Z2A Corp. (“**Z2A**”) and Christine Hewitt (“**Hewitt**”) (together, the “**Respondents**”) by Staff of the Commission (“**Staff**”) in a Statement of Allegations dated March 2, 2010, in connection with which the Commission issued a Notice of Hearing on the same date.

[2] Prior to the hearing, the Commission approved a settlement agreement between Staff and the former respondents Innovative Gifting Inc. (“**IGI**”) and Terence Lushington (“**Lushington**”) on March 29, 2011 (*Re Innovative Gifting Inc.* (2011), 34 O.S.C.B. 3799 (the “**Lushington Settlement**”). As a result, the only remaining respondents at the time of the Merits Hearing were Ms. Hewitt and Z2A.

B. The IGI Program

[3] Staff’s allegations against Hewitt and Z2A centre on their alleged involvement in the “**IGI Program**”. IGI ran what was described as a charitable gifting program (the “**IGI Program**”). The IGI Program was promoted on the IGI website as “a tax-efficient program to maximize the impact of donations for philanthropists, potential donors, and charities”. Prospective donors were informed that cash donations to a designated registered Canadian charity would be matched by a “gift of minority, non-controlling shares trading on the Frankfurt Stock Exchange”.

[4] Under the IGI Program, donors would contribute money to charities and receive in exchange shares in a company, the market value of which shares was purportedly a multiple (six to eight times) of the value of their monetary contribution to the charity. IGI promotional material indicates that for every \$1,000 in cash donated, \$6,000 in shares would be issued in the name of the donor. Donors were led to believe that the shares they were issued were provided by a “non-resident Swiss philanthropist”.

[5] The donor had the choice of donating the shares received to the charity. If the shares were so donated, for each \$1,000 cash donation, the donor would then receive a charitable receipt for a total of \$7,000 representing the \$1,000 cash donation and the \$6,000 share donation. If the shares were not donated to the charity, the participating donor was required to hold the shares for a number of years.

[6] In the circumstances before me at the Merits Hearing, the particular shares “donated” as part of the IGI Program were shares in RCT Global Networks Inc. (“**RCT**”). RCT was an Ontario corporation involved in the construction industry that became listed on the Frankfurt Stock Exchange in June 2008. RCT is not a respondent in this matter.

C. Staff's Theory of the Respondents' Involvement in the IGI Program

[7] Hewitt became involved in the IGI Program in late November of 2008. On November 26, 2008, Hewitt signed an agreement with IGI on behalf of Z2A "to facilitate the understanding that Z2A's relationship between the philanthropists as a liaison is to complete the legal documentation process and administer the share certificates in the donor's name". Under this agreement, Z2A's compensation for "administrative services" provided in connection with the IGI Program was 10% of the cash donated, payable to Z2A by IGI.

[8] In connection with the IGI Program, the Respondents received sets of lists of donor names from IGI. Hewitt would forward these lists to Drew Reid ("**Reid**"), an individual connected to RCT. Reid would deal with the transfer agent and would then attend at Z2A's offices with certificates for shares of RCT in the names of the individuals on the lists. Hewitt checked the spelling of the names and share amounts on the share certificates against the lists provided to her by IGI and then delivered the share certificates to IGI's offices.

[9] For this work, Z2A provided invoices to IGI for "Fees for Liaison / Intermediary services rendered in the following matters: RCT Global Networks philanthropist / done contribution to Canadian registered charities per CRA 2008 donation incentive program". In respect of shares issued to approximately 500 donors in December 2008 and January 2009, Staff submits that Z2A was paid \$230,453.10 for work performed over a period of 18 days.

[10] Staff submits that the Respondents played a key role in the IGI Program by facilitating the supply of RCT shares to the IGI Program. Staff characterizes Hewitt's role as being IGI's "liaison" to the "philanthropist".

D. Allegations

[11] Given that the distribution of RCT shares under the IGI Program was contingent upon the payment of monies by the "donors" to the charities (90% of which funds flowed or were to have flowed through IGI), Staff submits that the distribution of RCT shares was a trade in securities under the Act.

[12] Staff submits that Hewitt and Z2A performed acts in furtherance of these trades in RCT shares by arranging for the issuance of RCT shares in the names of the "donors" in the IGI Program. In return, Staff submits that Z2A received a commission equal to 10% of the cash "donated" by the participants.

[13] Staff makes the following allegations against Hewitt and Z2A in the Statement of Allegations:

- (a) During the time between and including September, 2008 and January, 2009 (the "**Material Time**"), the Respondents traded in securities of RCT without being registered to trade in securities, contrary to subsection 25(1)(a) of the Act and contrary to the public interest; and
- (b) During the Material Time, Hewitt, being a director and officer of Z2A, did authorize, permit or acquiesce in the commission of the violations of sections 25 and 53 of the Act, as set out above, by Z2A or by the employees, agents or

representatives of Z2A, contrary to section 129.2 of the Act and contrary to the public interest.

[14] Staff alleges that the Respondents participated in acts, solicitations, conduct or negotiations directly or indirectly in furtherance of the sale or disposition of securities for valuable consideration, in circumstances where there were no exemptions available to the Respondents under the Act. Further, Staff submits that approximately 1.3 million shares issued to over 90 donors in the IGI Program were not previously issued and therefore the trades in those shares constituted a distribution under the Act.

II. USE OF HEARSAY EVIDENCE

[15] Section 15 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended permits the Commission to admit evidence in a hearing that may not otherwise be admissible in a court, including hearsay evidence. Section 15 states:

15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

- (a) any oral testimony; and
- (b) any document or other thing

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[16] Although admissible, the weight to be accorded to hearsay evidence must be determined by the Panel. During the Merits Hearing, I admitted hearsay evidence tendered by the parties, subject to my consideration of the weight to be given to that evidence.

III. EVIDENCE – WITNESS TESTIMONY

[17] Five witnesses testified at the Merits Hearing. The witnesses called on behalf of Staff were: Peter Black (“**Black**”), the Executive Director of Furry World Rescue Mission (“**Furry World**”); Reid; and Lori Toledano (“**Toledano**”), who was a Staff investigator in this case. Hewitt testified on her own behalf and also called Julie Morais (“**Morais**”), the former Office Manager at Z2A, as a witness.

A. Peter Black

[18] Black has been the Executive Director of the charity Furry World since 2008, is its only employee and is one of four or five members of its board of directors. Black described Furry World as an advocacy charity for animal rights with particular reference to having animals recognized as sentient beings and not as property. He testified that Furry World conducts seminars at the University of Toronto on a monthly basis.

[19] According to Black, Furry World has received funding through “sweat equity”, personal contributions and through an attempt to generate donations through IGI. All donations received by Furry World in 2008 were made through the IGI Program.

Furry World's Initial Involvement with the IGI Program

[20] Black testified that Furry World became involved with IGI in August 2008 when it was approached by Joseph Lee (“Lee”), who proposed a plan through which Furry World could receive donations. Lee provided Black with a draft agreement between Furry World and IGI in the form of a letter. The agreement, which is addressed to IGI, was dated October 3, 2008 and states in part:

IGI is engaged with a network of gifting entities whose intention is to make a gift and to thereby enhance gift-giving for charitable purposes. You assist the network by seeking out persons (the “Donors”) who also intend to make a gift to charities.

The agreement was signed by Black, as the Executive Director of Furry World, and Lee, as the “Managing Partner’s” of IGI.

[21] It was explained to Black that in addition to the cash component of the donation, there would be a share donation made as part of the IGI Program. Black understood that the IGI Program secured shares for participating charities through a philanthropist. A tax receipt would be issued to the donor for the value of the shares and for any cash that was donated at the same time. The aggregate amount of the cash component and the value of the shares was to translate into a payment to IGI.

[22] Furry World was later contacted by Lushington, who explained that Lee was no longer associated with IGI and, as a result, a new contract would have to be signed. On this basis, Black signed another contract with IGI on November 26, 2008, which included additional terms not in the original agreement. The November 26, 2008 agreement, in the form of a letter addressed to IGI, stated in part:

IGI shall present prospective donors to us, and if IGI retains financial planners or other third parties for this service, you shall charge us a cash sum equal to eighteen per cent (18%) (Including GST) of the aggregate donated amount (including cash and the securities, if any) by each donor. The aggregate is based on \$1 cash donation and \$4 in the public market quoted value of each share donated. If shares are not donated by the donor you shall charge us an amount equal to 90% of the cash donation.

(a) 18% of the aggregate cash gift received by you and shares to be donated to you by each Donor if the donated shares’ value is to equal approx. four (4) times the cash gifted to you by the Donor; or

(b) 12.9% of the aggregate cash gift received by you and shares to be donated to you by each Donor if the donated shares’ value is to equal approx. six (6) times the cash gifted to you by the Donor; or

(c) 10% of the aggregate cash gift received by you and share to be donated to you by each Donor if the donated shares’ value is to equal approx. eight (8) times the cash gifted to you by the Donor.

Furry World's Participation in the IGI Program

[23] Furry World participated in the IGI Program, receiving money beginning on or about November 25, 2008 and continuing until the first week of January 2009. In addition to the cash donations, Furry World was “gifted” shares in RCT.

[24] Black was presented with invoices sent from IGI to Furry World. The invoices listed donor names, the cash amount each donor donated and the assigned value of the RCT shares “donated” by each donor. The invoices also listed “Marketing, Promotion and Fundraising Fees”, which were equal to 90% of the total cash amount donated by the donors, payable to IGI by Furry World.

[25] Black confirmed that 90% of the cash donated to Furry World was paid to IGI and testified that these invoices were a summary of payments made. Once the cheques from the donors cleared, Furry World would make the payments to IGI.

[26] Black confirmed that the donors had a choice as to whether they wanted to donate their RCT shares to the charity or keep them. Some individuals who made cash donations to Furry World held on to their shares and others donated them to Furry World. Black testified that the timing for Furry World's receipt of the RCT shares varied; sometimes Furry World would receive the shares at the same time as the cash donations and other times the shares would be provided later. The practice was for IGI to bundle the share certificates according to the invoice to which they related. Black would attend at the IGI offices to pick up invoices, donor cheques and share certificates.

[27] Black testified that, in total, Furry World retained approximately \$250,000 of the cash donated under the IGI Program. This amount includes the money held back by Furry World once it learned that the Commission had issued a temporary order that IGI cease trading in securities.

[28] Black testified that his last meeting with IGI was on or about February 25, 2009, some time after he learned of the Commission's investigation into IGI on about January 15, 2009. I note that the Commission obtained a warrant to search the IGI premises on January 19, 2009 and on February 20, 2009, the Commission issued a temporary order prohibiting trading in securities by IGI.

Christine Hewitt

[29] Black first met Hewitt at the IGI offices on a Sunday evening in December 2008. He testified that Hewitt was introduced to a group of IGI customers (or potential customers) as a “representative of the philanthropist”, testifying: “I can't remember the exact word. All I can remember is that she was there vis-à-vis the philanthropist, vis-à-vis shares” (Hearing Transcript, October 3, 2011 at page 80, lines 12 to 14). According to Black, Hewitt arrived at the IGI offices with Lushington and provided Black with the following information with respect to the RCT shares Furry World was to receive through the IGI Program:

She said it would make the charity rich, that the orders would do greater than it was in terms of the stability function. She said that she was conducting a promotion campaign for the early year of 2009, that she worked closely with the

philanthropist and these companies [RCT], and that she guaranteed that the shares were marketable or liquid and had true value.

(Hearing Transcript, October 3, 2011 at page 44, lines 7 to 13)

[30] In December 2008, Black attended at the IGI offices five or six times; Hewitt was also there on a number of these occasions. Black testified that on one of these occasions in December 2008 he had a discussion with Hewitt during which he asked her if the RCT shares were *bona fide* and whether she was comfortable with the charities accepting them. Black described Hewitt's response as follows: "She assured me that the stocks were good stocks and that the charity would not be a risk and that it was her recommendation that we should continue" (Hearing Transcript, October 3, 2011 at page 82, line 24 to page 83, line 2). Black testified that he was one of six or eight people present for this conversation who were all told that Hewitt was there *vis-à-vis* the philanthropist and a provider of the stock certificates and that she was there to answer their questions as to the *bona fides* of the transaction:

... she was not a representative of IGI. She was a representative of the philanthropist. She was introduced by Mr. Lushington as not a member of IGI but as representative of the philanthropist and a person that was going to supply the securities and specifically RCT Global, and there were six or eight people in the room that were there. And just as I was there to satisfy to networks that the charity was a bona fide charity, that it had federal status and operating in good faith, she too was there as a marketing device by Mr. Lushington and IGI to supply the bona fides for the securities.

(Hearing Transcript, October 3, 2011 at page 84, line 22 to page 85, line 8)

[31] According to Black's testimony, the "philanthropist" was not identified by anyone at IGI because he wished to remain anonymous.

[32] On April 3, 2009, Black wrote a letter to Robert Tummonds ("**Tummonds**"), the Chief Executive Officer of RCT, who by that time had been identified to Furry World as "the philanthropist" in the IGI Program. In this letter, Black expressed his concern that the shares in RCT that had been provided to Furry World were not "tradable *per se*", and wrote:

When conducting due diligence on participating in your direct philanthropy, we conducted interviews with a person purporting to be your Liaison, namely, Christine Hewitt of Z2A. Ms. Hewitt assured the charity that RCT Global Networks was planning significant Investor Relations activities in 2009 and was also considering expanding their presence in other Exchanges. Ms. Hewitt further reported that the Investor Relations Campaign was scheduled for the first half on 2009 [*sic*] and that such a Campaign would permit the selling of some part of our share holdings for the benefit of accomplishing our Objects. Ms. Hewitt also indicated that she would assist the charity in selecting a broker for the shares.

[33] During his testimony, Black confirmed that the above paragraph with respect to Hewitt was true, and elaborated on the “Investor Relations” activities that Hewitt had described to him:

... she indicated that promotion, stock promotion, activities were going to occur. I don't know what those would be, but the resources were going to be deployed to create movement in the shares or to ensure that the value would be redeemable by the holders of the shares.

(Hearing Transcript, October 3, 2011 at page 47, lines 20 to 25)

[34] Black testified that he last saw Hewitt on January 15 or 16, 2009 at the Z2A offices. According to Black, he had requested this meeting with Hewitt to discuss the plans for the RCT shares. During this meeting, Hewitt received a call from Lushington, who indicated that the IGI offices had been “raided by the OSC”. As a result, Black's meeting with Hewitt was cut short. Black testified that, despite efforts on his part, he was unable to meet with Hewitt after their January 15 or 16, 2009 meeting. Although Black claimed that he last saw Hewitt in January 2009, he also testified that he dealt with Hewitt later in 2009 regarding the consolidation of RCT shares held by Furry World.

RCT Shares held by Furry World

[35] In late April or early May 2009, after the Material Time, Black contacted Hewitt to request her assistance in consolidating the RCT share certificates held by Furry World. Black testified that Furry World paid Hewitt \$3,500 to consolidate the approximately 300 stock certificates held by Furry World into one stock certificate.

[36] Black also testified that Hewitt introduced him to an individual by the name of Anthony Diamond who was to assist in “crystallizing” the value of the RCT shares and introduced him to another man named Domenic who was to assist with the stock certificate consolidation. According to Black, he met with each of these men only once, at the Z2A premises.

[37] During cross-examination by Hewitt's counsel, Black denied that Hewitt provided any additional services with respect to couriering documents, providing office space, providing boardrooms or providing secretarial assistance. Black testified that he attended at her offices approximately six or eight times and never met with a client there.

[38] Black testified that Furry World was ultimately unsuccessful in depositing its RCT share certificates with any broker bank. Black had sought Hewitt's assistance with this. He testified that Hewitt “re-emerged in around the end of April of 2009 and represented that she could assist the charity in crystallizing the value of the shares consistent with their alleged fair market value” (Hearing Transcript, October 3, 2011 at page 53, line 24 to page 54, line 3). Black testified that he eventually realized that the RCT shares were worthless:

[b]ecause every entity that I went to in order to crystallize them said that they were worthless. There was one entity that wouldn't even electronically deposit them. They weren't worth the transaction to electronically deposit them.

(Hearing Transcript, October 3, 2011 at page 54, lines 10 to 14)

Other Legal Proceedings

[39] IGI initiated civil proceedings against Furry World and other charities before the Ontario Superior Court of Justice for payment of monies IGI claimed it was owed by the charities. IGI's application was dismissed and counter applications by the charities were allowed, resulting in an order that IGI return fees paid to it by the charities and that IGI pay costs. The amount ordered payable to Furry World specifically was \$787,615, which represented the total amount paid by Furry World to IGI. At the time of the Merits Hearing, Furry World had not been paid these amounts. Documents related to the civil proceeding indicate that total cash amounts donated to Furry World from November 2008 to March 2009 was \$1,056,103.80, the total amount for which IGI invoiced Furry World was \$950,493.43 (90% of the amount donated to Furry World) and that the total amount Furry World paid IGI was \$787,615.

[40] Black and Furry World were also involved in an action against Hewitt in Small Claims Court for approximately \$7,000 relating to a claim for services that were not provided. As of the time of the Merits Hearing, this action was still before the Court.

B. Drew Reid

[41] Mr. Reid is self-employed and has been with his company Mobiliare Argenti Ltd. ("**Mobiliare**") for the past five years. According to Reid, Mobiliare provides consulting and management services with respect to the launching of two telecom projects and hyperbaric oxygen treatment. Reid noted that at one point he was also doing some currency trading.

Reid's Initial work for RCT Global Networks

[42] Reid was introduced to RCT in 2006, when RCT was considering becoming publicly listed. Reid was introduced to Tummonds, who owned RCT at the time, by an individual who was working with the company. Reid testified:

I got involved in the capacity of trying to help them expand the company and perhaps list the company on the markets in the stock exchange. I didn't have any specific context into that, but I do know of a few people. So I made some phone calls, arranged some meetings so that he could proceed to try and list his company, which eventually happened.

(Hearing Transcript, October 3, 2011 at page 164, lines 7 to 13)

[43] Reid testified that he considered himself an independent contractor and not an employee of RCT.

[44] Reid described RCT's business as "telecommunications infrastructure". He explained that RCT installed cabling, such as telephone lines, in buildings as they were being built. In 2006, RCT had approximately 12 employees and had seven or eight vehicles on the road.

Reid's Involvement with RCT after Tummonds became Ill

[45] At some point in the Fall of 2008, Tummonds became ill. At the time of the Merits Hearing, Reid could not recall the exact timing of when Tummonds' illness began; Reid suggested it was sometime in September 2008 or November 2008. According to Reid, Tummonds "was in the hospital for quite a while, many, many, many months" (Hearing Transcript, October 3, 2011 at page 171, lines 3 to 4). The Panel was presented with a letter addressed "To whom it may concern" and dated December 1, 2008 on RCT letterhead which states:

This is to advise you that I have had significant health issues and that George Chriss will handle the affairs of RCT Global Networks Inc. in my absence while I recuperate at home. Please share any and all information necessary to help George in the performance of his duties on behalf of myself and the company.

I thank you very much for your cooperation in this matter and hope to resume my duties in the near future.

[46] Reid described George Chriss ("**Chriss**") as a person who understood RCT's business on a technical level. It appears from Reid's testimony that Tummonds had known Chriss before the Fall of 2009, but no explanation was provided as to any prior relationship between Tummonds and Chriss. Reid re-introduced Chriss to Tummonds after Tummonds became ill, at which time Chriss became employed by RCT. Reid testified that Chriss was responsible for the ongoing day-to-day operations of RCT once Tummonds became ill and that Reid was primarily responsible for the public side of the company, along with another individual, Dan Cullen ("**Cullen**"), who Reid described as being involved in the company's financial planning in a very minor sense.

[47] When asked about whether he had any dealings with RCT's expenses while Tummonds was ill, Reid replied, "The only time I dealt with expenses of the company was when I exercised some options. Then I paid expenses for the company" (Hearing Transcript, October 3, 2011 at page 172, lines 9 to 11). During cross-examination, Reid was asked to provide examples of services he provided to RCT. Reid testified that in addition to the work previously described with respect to the listing of the company, he introduced Tummonds to Z2A to further the listing of RCT and would assist with negotiations on behalf of RCT because Chriss was not necessarily good at them.

[48] During Reid's testimony, he was presented with copies of Staff investigation notes from June 2009 relating to their investigation of another matter. In one investigation note, Ms. Toledano recalls a telephone conversation she had with Reid:

... [Reid] advises me that he is a shareholder of RCT Global, but is not employed by the company in any capacity. Reid states that Tummonds is in and out of the hospital and unable to return my call. I ask Reid if there is another company official that I can speak to in Tummonds' absence. Reid says that Tummonds does not trust anyone else to deal with the OSC's request for information. I ask about the CFO listed on RCT's website. Reid replied that he wasn't sure who the CFO

was at this time, but assured me that he could deal with my questions/concerns on Tummonds' behalf. ...

RCT's Option Agreements with Mobiliare

[49] The Panel was presented with two option agreements between RCT and Mobiliare (together, the “**Option Agreements**”). The first Option Agreement, for 8,000,000 shares in RCT, was dated March 29, 2007 and notes that RCT “wishes to engage the services of [Mobiliare] in order to assist it in obtaining a listing on the Frankfurt ‘Over the Counter’ stock exchange” and that RCT “is desirous of retaining [Mobiliare] on a performance basis and is therefore prepared to issue a substantial number of shares to it in the event it is successful”.

[50] A second Option Agreement, also for 8,000,000 RCT shares, dated November 3, 2008 was also presented in evidence. This second Option Agreement is substantially the same as the March 29, 2007 Option Agreement, but notes that RCT “wishes to engage the services of [Mobiliare] in order to assist it in locating qualified personnel to provide it with business and investment opportunities relating to [RCT's] listing on the Frankfurt ‘Over the Counter’ stock exchange” and that “these activities include locating and retaining parties who are able to provide a market from [RCT's] shares [*sic*], assist in the proper distribution of [RCT's] shares, provide [RCT] with capital for working capital and capital acquisition purposes”.

[51] Pursuant to both Option Agreements, RCT agreed to provide Mobiliare with the option to purchase RCT shares:

The Corporation [RCT] hereby grants to the Optionee [Mobiliare] the irrevocable option (the “Option”) to purchase some or all of the Optioned Shares at a price of seventy-five one hundredths of a cent (\$.0075) CDN per share, subject to the terms and provisions of this Agreement.

[52] Reid testified that the options granted to Mobiliare pursuant to the first Option Agreement were in exchange for work Reid had done for RCT with respect to listing it on the Frankfurt Stock Exchange:

Well, Mobiliare had done a lot of work in terms of getting the company up and listed, etc. And he didn't have a lot of funds at the time. So the arrangement was predicated on the company being listed and to provide my company with options as compensation for having done all the work. There was a lot of work involved to get Global Networks listed. He [Tummonds] was a pretty needy individual.

(Hearing Transcript, October 3, 2011 at page 166, lines 2 to 9)

[53] When asked about the purpose of the second Option Agreement, Reid testified:

Well, it was to try to further the operations of the company even in lieu of the fact that Tummonds was sick at the time, and George Chriss was managing the technical affairs of the company, was to try and advance the company, bring it under contracts, expand any contracts with Menkes, that sort of thing which of course I would have fallen back on to George Chriss as well.

(Hearing Transcript, October 3, 2011 at page 173, line 19 to page 174, line 1)

Reid testified further:

Primarily, the discussion was, even as it's worded, was to bring in -- to try and expand contracts with the existing contractees, Menkes, Tridel, etc. That was -- if needed, hire people to further the public listing, that type of thing. It was recognized that George Chriss didn't necessarily have the management skills to deal with the securing of contracts, etc. So Bob [Tummonds] was hoping that I would be able to do that.

(Hearing Transcript, October 3, 2011 at page 174, lines 10 to 18)

Compensation for Work Done for RCT and Exercise of Options

[54] Reid testified that Mobiliare exercised its options at a price of 0.075 cents per share. However, later in his testimony, when questioned as to whether he paid 0.075 cents per share when exercising his options, Reid answered:

... yes, in the fashion of paying bills and expenses for the company, and there was many ongoing. So whenever shares were optioned, I paid expenses and bills for the company.

(Hearing Transcript, October 4, 2011 at page 35, lines 10 to 13)

And further:

So whenever I exercised options, I paid for the -- I paid for those options to Global Networks in the form of paying expenses and bills. So I would have paid for these 180 shares already ...

(Hearing Transcript, October 4, 2011 at page 35, lines 21 to 25)

[55] When questioned further, Reid stated "As options were exercised, I paid for -- I paid for the options, as I would be obligated to do" (Hearing Transcript, October 4, 2012 at page 35, lines 8 to 10). Reid testified that he made payments in respect of exercising options by paying expenses and bills for RCT including payments to Heritage Trust Transfer Agency Inc. ("**Heritage Trust**"), issues with the landlord, legal costs and payroll costs. Despite Staff's request prior to the hearing that Reid provide receipts for items he paid for on RCT's behalf, Reid never provided this documentation and it was not in evidence at the hearing. Reid testified that no accounting document existed that provides a record of amounts he owed to RCT and amounts he paid on behalf of RCT.

[56] It is clear, in any case, that Mobiliare did not make any direct payment to RCT for the exercise of the options at the agreed price of 0.075 cents per share.

[57] In addition to the granting of options, Reid testified that on occasion, Tummonds also paid Reid funds, approximately \$10,000 over their entire relationship, and that he was issued

500,000 shares in addition to the shares issued to Mobliare under the option agreements. The Heritage Trust Detailed Transaction Journal for RCT notes that Reid was issued 500,000 shares from treasury on February 12, 2008 and a further 250,000 shares on May 27, 2008 and 300,000 shares November 4, 2008. According to the Detailed Transaction Journal, share issuances to Mobiliare began in December 2008.

[58] During cross-examination, Reid admitted that he never paid directly for any of the shares in RCT that he or Mobiliare received. He testified that 500,000 shares in RCT were given to him in exchange for services rendered with respect to work he had done towards getting the company listed in 2007 or 2008. Reid testified that including the approximately 8.8 million shares issued to Mobiliare when it exercised options, Mobiliare or Reid were issued a total of approximately 9.2 million shares in RCT. Although Reid testified that his shares would not have been worth very much in December 2008, he did admit that the company was listed at \$1.50 per share.

[59] I note that the Heritage Trust records indicate that, during the Material Time, Mobiliare was issued over 12.3 million shares in RCT. Many of the shares optioned by Mobiliare were cancelled and issued to participants in the IGI Program as well as to Mobiliare. At the end of the Material Time, Mobiliare held 1,916,561 RCT shares. The Heritage Trust records indicate that Reid was personally issued 1,600,000 RCT shares between February 12, 2008 and May 29, 2009, with 1,300,000 shares apparently cancelled. As of the end of the Material Time, Heritage Trust records indicate that Reid held no shares in RCT.

[60] Reid estimated the total value of the expenses he paid for RCT to be in the range of \$50,000 to \$60,000. He testified that these payments were made by Mobiliare through the payment of invoices or bills directly on behalf of RCT, payments made to Chriss and payments made to other staff of RCT. He testified that RCT would have records of receipts totalling these payments of \$50,000 or \$60,000, however no such records were presented in evidence.

[61] Reid's explanation for how the shares Mobiliare optioned were paid for was unsatisfactory. When questioned during cross-examination why he would pay the above expenses for RCT, Reid replied "Well, because it was a good company" and noted that he thought RCT had a lot of potential and would succeed.

[62] As noted above, most of the shares issued to Reid and Mobiliare were eventually cancelled and issued in the names of other individuals or companies.

Reid's Involvement with Christine Hewitt and Z2A

[63] Reid testified that he was introduced to Hewitt in 2005 or later by an entrepreneur by the name of Seamus Keown ("**Keown**"). At that time, according to Reid, Hewitt's company was interested in buying shares in RCT. I note that Z2A was not incorporated until 2007, but no further evidence was provided to clarify this point. Reid testified that he met Hewitt again in 2008, at which time he introduced her to Tummonds "to further the company on the public scale". Later, Reid testified, there was an agreement whereby Z2A was free to provide RCT with assistance in arranging the transfer of shares.

[64] After Tummonds became ill, Reid continued to interact with Hewitt. Reid testified that Hewitt wanted to buy stock in RCT and Reid exercised his options under the Option Agreements

to facilitate this. Reid's testimony was that he did not know why Hewitt was interested in buying the RCT shares.

[65] Reid was presented with evidence of a December 2008 Mobiliare Resolution, signed by Reid, that stated that RCT shares issued to Mobiliare be cancelled and split up according to an attached schedule that listed the names of individuals, their addresses and the number of shares to be assigned to them. Several of these lists of investor names were provided in evidence. Reid testified that Hewitt or Morais at Z2A would provide him with these lists and that he would arrange for the RCT shares to be reissued in their names.

[66] Reid explained that he, as Mobiliare, would exercise his options and purchase RCT shares from treasury. On the same day, he would cancel those shares and they would be issued in the names of the individuals provided by Hewitt. This continued from the later part of 2008 through the beginning of 2009. This pattern of share issuances and cancellations is reflected in the Detailed Transaction Journal for RCT provided to Staff by Heritage Trust and entered into evidence at the hearing. Some individuals were issued RCT shares directly from treasury, rather than being issued the cancelled shares previously held by Mobiliare. Reid could not provide an explanation for this during his testimony, but stated that all the individuals named on the lists provided by Z2A were to have received the cancelled shares held by Mobiliare after it exercised its options.

[67] Reid testified that he was given authorization to deal with Heritage Trust on behalf of RCT and identified in evidence a letter dated March 18, 2007 on RCT letterhead. The letter is addressed to Reid care of Mobiliare and is signed by Tummonds on behalf of RCT. It states:

This is to authorize Drew Reid to deal directly with the Transfer Agent Heritage Trust, on my behalf using my electronic signature for RCT Global Networks Inc, to handle required transactions, issue shares, negotiate with the Transfer Agent as required[.]

[68] According to Reid, Z2A paid Mobiliare five cents per RCT share provided to individuals named on the lists provided by Hewitt. Reid agreed in testimony that approximately 8.8 million shares in RCT were issued to Mobiliare from treasury during the Material Time, which would coincide with the number of options he exercised at the time. This number is supported by the documentary evidence of the Detailed Transaction Journal for RCT provided to Staff by Heritage Trust.

[69] Hewitt provided Staff with a document entitled Payments to Mobiliare Argenti Ltd. In this document, she lists the following payments made to Mobiliare from Z2A:

December 12, 2008	\$13,045.50
December 18, 2008	\$9,992.50
December 22, 2008	\$17,805.00
December 24, 2008	\$20,558.25
December 30, 2008	\$32,818.15
December 31, 2008	\$20,477.50
January 13, 2009	\$1,725.00

April 22, 2009	\$20,990.00
April 24, 2009	\$11,395.00
April 29, 2009	\$8,482.50
June 12, 2009	\$921.00
Total	\$158,213.70

[70] I note that the actual total of the amounts listed above, \$158,210.40, is slightly different than the total indicated in the document Hewitt provided to Staff. I also note that, based on the evidence, it is not certain that the April 29, 2009 cheque was in the amount of \$8,482.50 (it appears that the cheque was in the amount of \$6,482.50). The total amount paid by Z2A to Mobiliare during the Material Time, according to the records provided by Hewitt, is \$116,421.90. I note that the amount Mobiliare received is inconsistent with Reid's testimony that the Z2A payments to Mobiliare were payments for RCT shares at a rate of five cents per share (see paragraphs [68] and [74]).

[71] When presented with Hewitt's documents, Reid testified that he recalled being paid closer to \$110,000. He provided Staff with a document that he prepared based on Mobiliare's records listing payments to Mobiliare from Z2A totalling \$116,421.90. This document includes the payments noted by Hewitt above from December 12, 2008 through January 13, 2009, but does not include the four payments in April and June of 2009.

[72] Reid's explanation for Mobiliare's receipt of approximately \$110,000 during the period of December 12, 2008 to January 13, 2009 from Z2A is unclear. Reid stated that Mobiliare received this money from Z2A in December 2008 and January 2009 because he was exercising options, paying expenses for RCT and selling shares to Z2A. When questioned further as to why Z2A was paying this money, he testified that it was because he was exercising his options and selling those shares to Z2A.

[73] Reid testified that he used the bulk of the funds that Mobiliare received from Z2A to maintain the operation of RCT, paying legal costs, transfer agent costs and other costs incurred by the company. Reid also paid himself out of the funds received from Z2A. As noted above, I was presented with no documentary evidence of any payments made by Reid or Mobiliare on behalf of RCT.

[74] Reid further testified that the money paid to Mobiliare by Z2A was payment for the shares issued according to Hewitt's instructions, rather than payment for a service Reid was providing to Z2A. During cross-examination, a copy of an email sent to Reid by Hewitt on September 17, 2009 was put to Reid. In the email, Hewitt writes: "You did all the leg work from dropping off and picking up and cancelling and amending and surely have all the records in your possession to this effect. You were paid by this office to do the work". However, Reid maintained in his testimony that the payments from Z2A to Mobiliare were payments for the shares to be issued to individuals named on the lists provided by Hewitt.

[75] Reid also testified that he would generally attend at Z2A's offices, which were less than one kilometre from his condominium, to pick up the list of individuals to whom share certificates were to be issued. Other times, the list would be e-mailed to Reid. Reid would then provide the

lists to Heritage Trust either by e-mail or by physically dropping them off at the Heritage Trust offices, which were approximately one kilometre from the Z2A offices. Once the share certificates were ready at Heritage Trust, Reid would pick them up and drop them off at Z2A's office.

[76] Reid claimed that he did not know where the shares he provided to Z2A were going and that it would have been an assumption on his part to say that those RCT shares were connected to the IGI Program. According to Reid, it was not until the Commission became involved in early 2009 that he realized the shares were going to individuals involved in the IGI Program.

[77] When Reid was providing Hewitt with RCT shares during the Material Time, he was her only contact with anyone associated with RCT (although Reid noted that he was specifically representing Mobiliare as opposed to RCT). Tummonds was not working at RCT at the time as he was still very sick.

Heritage Trust Invoices

[78] Although I was not provided with documentary evidence of payments made by Reid or Mobiliare on behalf of RCT, I do note that some invoices from Heritage Trust to RCT were addressed to Reid. Reid was also presented with evidence of invoices from Heritage Trust to RCT dating from December 31, 2007 to March 31, 2011, which note RCT Global Networks recipient email addresses for "rtummonds" or "dreid". Invoices dated from November 28, 2008 are addressed to Reid and invoices dated December 31, 2007 through October 31, 2008 note the email address for Tummonds. Reid testified that the invoices addressed to him related to stock transfer services provided by Heritage Trust associated with the issuance of shares to Mobiliare, the cancellation of those shares and their reissuance to individuals and that the dates of these invoices coincide with the time that Tummonds became sick. Heritage Trust charged RCT a monthly fee of \$375 and charged additional fees for opening of new accounts and issuance and cancellation of share certificates.

Communications between Reid and Hewitt after the Material Time

[79] I was presented with evidence of emails and letters from Reid to Hewitt and to Toledano sent during the July and August 2009 time period. In these emails, Reid refers to RCT shares that he requests Hewitt return so that they may be cancelled by Heritage Trust. I did not find this evidence relevant to the allegations.

Correspondence between Staff and Tummonds

[80] Staff took Reid to an April 24, 2009 letter from the Commission to Tummonds in which Staff requested information from Tummonds regarding RCT and its involvement with the IGI Program. Reid was also presented with a May 6, 2009 letter on RCT letterhead and signed by Tummonds in response to Staff's letter of April 24, 2009 (the "**May 6, 2009 Letter to Staff**"). Reid testified that a lawyer by the name of Colin James ("**James**") would have assisted Tummonds in drafting the May 6, 2009 Letter to Staff and denied the he assisted James in drafting that letter.

[81] However, the Panel and Reid were provided with a copy of Tummonds' handwritten response to a November 30, 2010 letter from Staff (the "**November 30, 2010 Tummonds Response**") in which Tummonds writes that Reid wrote the May 6, 2009 Letter to Staff. Reid explained Tummonds' comment as follows:

Mr. Tummonds relied on me for lot of things in terms of keeping the company going and trying to expand the company while he was ill. So I'm not surprised that he wrote Drew Reid. In fact, in that response, Colin James would have written the response.

(Hearing Transcript, October 3, 2011 at page 195, lines 2 to 7)

Reid further testified that James may have asked him some questions, but that Reid did not physically draft the May 6, 2009 Letter to Staff. During his examination by Staff, Reid testified as follows with respect to James' relationship with RCT:

Q. Did you retain Mr. James to prepare this response?

A. Well, Mr. James was acting for Mobiliare all the way through the transactions of shares that I'd sold to Z2A. So he wasn't specifically retained for any particular letter. He was already on retainer.

Q. But that's for Mobiliare. This letter is addressed to Mr. Tummonds.

A. Yes.

Q. And now Mr. Colin James, you say, he's responding to the letter that's addressed to Mr. Tummonds. So how does that come to be?

A. Well, Mr. Tummonds probably contacted me about it, and I would have spoken to Mr. James, and Mr. James would have spoken to Mr. Tummonds, and Mr. Tummonds would have instructed him to write a response.

(Hearing Transcript, October 3, 2011 at page 195, line 18 to page 196, line 8)

[82] During cross-examination, Reid explained that James was Mobiliare's lawyer, but was not RCT's lawyer. When questioned as to why James would be involved in drafting a letter on behalf of RCT if this was the case, Reid replied that it was because Staff's questions pertained to shares that had been optioned by Mobiliare.

[83] The May 6, 2009 Letter to Staff indicates that Tummonds had no knowledge of IGI or any person associated with IGI, but that RCT issued shares or options to parties that may be connected with the group Staff was investigating. The letter also states that:

RCT has received monies of the past several months from one of the option holders regarding its exercise of stock option, a Bahamian company Mobiliare, ...

and excepting those funds, the company has received no monies what so ever regarding any stock issuances or transfers.

[84] The May 6, 2009 Letter to Staff makes reference to an address for RCT in Sudbury, Ontario. Tummonds later responded to Staff that, to his knowledge, RCT did not have an office at that Sudbury address. Reid explained that a decision had been made while Tummonds was ill that RCT would try to acquire contracts in the Sudbury area. During cross-examination, Reid testified that the Sudbury address was the residence of one of his contacts who agreed to allow RCT's mail to be directed there. Reid testified that a Sudbury address was used because there was an opportunity in Sudbury with respect to potential construction contracts so it made sense to use an address in that city. Reid testified that, despite evidence to the contrary, Tummonds was made aware of the Sudbury address, but that he was under a lot of stress at that time and was not in the most lucid state. No one from RCT, including Reid, ever went to Sudbury, but that mail addressed to RCT was forwarded to Tummonds' address in Caledon.

[85] In the November 30, 2010 Tummonds Response, Tummonds describes Mobiliare's relationship with RCT as "Not sure what monies were received but the involvement was they were to take the company public and were given stock for payment". Further, Tummonds informed Staff in this document that although he signed the Option Agreements, he was not sure whether the RCT options were exercised, but that no money was paid to RCT. Reid testified that the information from Tummonds was incorrect and that the options were exercised, with payments being made to RCT in the form of Mobiliare's payment of RCT's expenses.

[86] Reid's evidence regarding payment for Mobiliare's exercise of RCT options is inconsistent with information provided in the May 6, 2009 Letter to Staff and the November 30, 2010 Tummonds Response.

[87] Also presented in evidence was a letter dated October 10, 2008 on RCT letterhead to Lushington at IGI. The letter appears to be signed by Tummonds and states:

Please be advised that RCT Global Networks is under my control and I am the major shareholder, who wishes to make shares available for gifting to your charities forthwith.

[88] Tummonds indicated to Staff in the November 30, 2010 Tummonds Response that: "This was my electronic signature and not to my knowledge. Was in the hospital at this time". Tummonds further informed Staff in the November 30, 2010 Tummonds Response that he never talked with IGI and had no conversations with Lushington. Reid testified that the October 10, 2008 letter to IGI was a result of a conversation with Tummonds and a discussion with Hewitt in 2008 about RCT making some shares available to IGI. Reid testified that he knew nothing about IGI at the time of this letter, but that Z2A would have provided RCT with IGI's address; he had previously told Staff that he facilitated the October 10, 2008 letter with an electronic signature. When questioned further about the October 10, 2008 letter and his previous testimony regarding when he became aware of IGI, Reid testified:

What I meant was I wasn't – he asked if I was aware of what Innovative Gifting was about or what their mandate was. That I was not aware of. I was aware of the name of Innovative Gifting, et cetera, prior to hearing it from the OSC.

(Hearing Transcript, October 4, 2011 at page 112, line 24 to page 113, line 4)

[89] When referred to the text of the October 10, 2008 letter, which references making RCT shares available for gifting, and asked again about when he became aware of the IGI Program, Reid testified:

We were aware, as was Tummonds, about Innovative Gifting prior to that, and [the] gifting program. What that actually – actually entailed, et cetera, and the mechanisms of that, no, I wasn't aware of that. That was explained to me more in depth for the first time when I met with the OSC.

(Hearing Transcript, October 4, 2011 at page 113, lines 18 to 23)

Reid further testified:

Well, RCT – Mr. Tummonds was expressing that he was – he was not – of course we didn't understand what the mechanisms or the specifics were of the gifting program. We understood the term “gifting program.” We understood the name Innovative Gifting.

And what he was doing was sending out a letter, which he knew of at the time, that he was interested in participating in that with Z2A. But there was no clear or direct understanding of what that – what the term “gifting program” specifically involved.

(Hearing Transcript, October 4, 2011 at page 114, lines 13 to 24)

[90] Tummonds also commented on a document provided to him by Staff entitled Deed of Gift of Securities dated December 12, 2008, which names RCT as the “Donee” and appears to be signed by Tummonds on behalf of RCT. Tummonds wrote to Staff that it is his electronic signature on the document, but that he did not remember seeing the document. Reid testified that he also did not remember this document and that RCT did not gift any securities.

[91] The May 6, 2009 Letter to Staff, which Reid testified was drafted by James on behalf of Tummonds and which Reid was consulted about, states: “I can assure you that no shares have been issued to anyone as part of said IGI program”. Reid testified that, in fact, it was Mobiliare that was exercising options and issuing shares to Z2A, so Tummonds was referring in this letter to the fact that RCT shares were issued to Z2A.

[92] I do not find Reid's testimony to be reliable evidence in several respects, including, as further described above:

- His testimony regarding payment for the RCT shares issued to Mobiliare in connection with the exercise of options was inconsistent. Reid testified that he, or Mobiliare, paid

RCT 0.075 cents for these shares, as required by the Option Agreements. However, when questioned further, Reid testified that these payments were made in the form of bill and expense payments made by Reid on behalf of RCT. Reid could not provide any documentation that would support a finding that Reid or Mobiliare made payments on behalf of RCT or that they paid RCT in connection with the share issuances.

Further, I find Reid's explanation of why he paid expenses on behalf of RCT – "because it was a good company" – to be unsatisfactory.

- Reid testified that Z2A paid Mobiliare five cents per RCT share issued in connection with the IGI Program. However, both the total amount Z2A provided to Mobiliare during the Material Time (\$116,421.90) and the amount Reid recalled receiving (\$110,000) are inconsistent with this assertion.
- Reid's testimony regarding his involvement in the May 6, 2009 letter is inconsistent. He testified initially that he did not assist James in drafting the letter, and later conceded that James may have asked him some questions. Further Reid's explanation that James was Mobiliare's lawyer but drafted the letter on behalf of RCT because it pertained to shares Mobiliare had optioned is not satisfactory.
- Reid testified that he did not know why Hewitt was interested in buying the RCT shares and that he did not become aware that they were being issued to participants in the IGI Program until the Commission became involved in 2009. This is inconsistent with Reid's later testimony. Reid was presented with an October 2008 RCT letter to IGI indicating Tummonds wished to make RCT shares available for gifting to charities, on which he previously told Staff he facilitated with Tummonds' electronic signature. Reid then testified that he was aware of the IGI Program, but not its mechanisms, and that there was no clear understanding of what the gifting program involved.

[93] The many inconsistencies in Reid's testimony make me reluctant to rely on it without corroboration. My conclusion that he is not reliable is supported by the April 2011 criminal record that was filed in evidence. From 1994 to 2001, Reid had 22 criminal convictions for offences related to dishonesty, which include convictions for false pretences, fraud, false statement in writing, personification with intent and forgery. I have relied strongly on the documentary evidence, particularly that obtained by Staff from sources other than Reid during its investigation.

C. Lori Toledano

[94] Staff's final witness was Ms. Toledano, a Chartered Accountant and designated specialist in investigative and forensic accounting. She was an Assistant Manager in Staff's Joint Securities Intelligence Unit and was the lead investigator in this matter. As of the date of the Merits Hearing, Toledano was no longer employed with the Commission. Toledano testified regarding Staff's investigation into the IGI Program.

The IGI Program

[95] Toledano was presented with documents obtained in the course of Staff's investigation of the IGI Program. She confirmed that the IGI Corporation Profile Report noted that Lushington was IGI's administrator and sole director. She also confirmed that a number of IGI marketing documents were provided to Staff by Lushington at the time of his interview with Staff.

Z2A and Hewitt

[96] A Corporation Profile Report accessed by Staff during their investigation indicates that Z2A was incorporated on June 25, 2007 and that Hewitt is the sole director of Z2A.

[97] During their search of the IGI offices, Staff came across invoices from Z2A addressed to IGI requesting payment for the following:

FEES for Liaison / Intermediary services rendered in the following matters:

RCT Global Networks philanthropist / donee contribution to Canadian registered charities per CRA 2008 donation incentive program.

The invoices also made references to numbered lists. Toledano testified that the lists relating to each invoice were not attached when the documents were seized by Staff, but that Hewitt later informed Staff that lists containing donors' names and the amount of their donation would have been attached.

[98] Toledano identified print-outs of pages of the Z2A website that were accessed and printed by Staff around the date of August 19, 2009, prior to Hewitt's voluntary examination. Z2A's website noted that:

For the past few years Z2A Corporate Services ("Z2A") has been focused on and is known as the "one-stop shop" for the preparation and filing of corporate and legal documentation for public companies. Essentially, we take care of all the time-consuming paperwork for companies going public.

[99] Toledano testified that Hewitt attended a voluntary interview by Staff in their investigation of another matter on August 19, 2009. Following that interview, Hewitt forwarded to Staff a number of documents that she had undertaken to provide to Staff during the interview. These documents included:

- Five Z2A invoices sent to IGI (see paragraph [96]).
- A list of payments made by Z2A to Mobiliare and, where they were available, copies of the cheques or bank drafts made out to Mobiliare (see paragraph [69]).
- Contact information for two individuals, including Black.

- The October 10, 2008 letter from RCT to Lushington at IGI indicating that Tummonds wished to make shares available for gifting to charities (see paragraph [87]).
- An IGI marketing document written to potential donors and their advisors which purports to set out the income tax provisions relating to the IGI Program's gifting arrangement.
- A copy of a Deed of Gift of Securities from RCT, with what appears to be Tummonds' electronic signature at the bottom (see paragraph [90]).
- A copy of an email from a person by the name of Christina Harper at IGI to Lushington dated December 5, 2008, which provides a background on RCT's business and identifying RCT as a company "which our philanthropists have generously provided to our gifting process to increase funding for our charities who have retained us as professional fundraisers".
- A copy of an RCT share certificate issued to Furry World.
- A list of payments received by Z2A from Solutions 21 (3897915 Canada Inc.) ("**Solutions 21**") on three dates in April 2009 totalling \$135,859.50.

[100] Toledano testified that the amounts payable in the invoices from Z2A to IGI represented the 10% of funds donated that Z2A was to be paid for its participation in the IGI Program. Toledano explained that the amount that Z2A received was not specifically related to a per share transaction, but was a flat fee based on the cash that had been received by IGI from the charity.

[101] Toledano also explained that Solutions 21 was a company identified by Hewitt during Staff's interview with Hewitt. Solutions 21 was an agent working with IGI to recruit donors for the IGI Program and had a number of clients they brought into the IGI Program. Toledano testified that based on her discussion with Hewitt, Toledano understood that a number of the share certificates seized by the Commission during its investigation related to clients of Solutions 21. Toledano's understanding was that Solutions 21 paid Z2A approximately \$136,000 to have these share certificates re-issued. Toledano explained that, in this case, rather than receiving the 10% fee from IGI, Z2A was paid money by Solutions 21 on a specific per-share transaction basis. However, I note that Hewitt's services to Solutions 21 were provided after the Material Time, and as such, I do not consider them relevant to the ultimate issue of whether Hewitt's conduct during the Material Time was contrary to Ontario securities law.

[102] Hewitt also provided Staff with the number of total shares issued to charities in the IGI Program. In an email dated September 1, 2009, Hewitt indicates that a total of 5,545,693 RCT shares were issued to four different charities (4,202,813 were issued to Furry World).

[103] Toledano testified that in December 2008, Z2A received \$229,453, representing 10% of the total cash amount donated to the charities under the IGI Program. Toledano also identified an agreement dated November 26, 2008 between IGI and Z2A, signed by Lushington and Hewitt, which states:

This Agreement is to facilitate the understanding that Z2A's relationship between the philanthropist as a liaison is to complete the legal documentation and administer the share certificates to the donor's name. For administrative services you will charge IGI 10% of the cash donated amount payable within 10 days of receiving the share certificates of the donors.

[104] Toledano identified section 139 certificates which confirm that neither Hewitt nor Z2A has been registered under the Act.

Bank Account Documentation

[105] Toledano reviewed bank account information with respect to accounts at RBC and HSBC held by IGI, obtained by Staff pursuant to summonses.

[106] During Toledano's testimony, documents that she prepared in an analysis of the source and use of funds in IGI's account with RBC were introduced into evidence. In her summary, which includes amounts greater than \$1,000, Toledano notes account inflows from participating charities and other investments by IGI business partners. Account outflows went to commissions, payments to IGI employees, Lushington, rent and office expenses, and "Liaison Fees" paid to Z2A. The document notes that these "Liaison Fees" to Z2A totalled \$229,453.10, which constitutes 16.7% of the total amount of inflows into the account. Toledano testified that this amount is consistent with the invoices provided to IGI by Z2A.

[107] The Source and Use Analysis for IGI's bank account with RBC, which was prepared by Toledano and presented into evidence, is reproduced below.

**Innovative Gifting Inc.
Source and Use Analysis
RBC Account # 03172-1089731
October 2, 2008 to July 16, 2010
(amounts > \$1,000)**

Description	Total (\$)	As a % of Total Inflows
<u>Account Inflows:</u>		
Received from Participating Charities	1,323,054.99	96.5%
Investments by IGI Business Partners	40,000.00	2.9%
Other	7,571.24	0.6%
Total Inflows:	<u>1,370,626.23</u>	100.0%
<u>Account Outflows:</u>		
Commissions	892,073.98	65.1%
"Liaison Fees" paid to Z2A	229,453.10	16.7%
Payments to IGI "Employees"	106,150.00	7.7%
Terence Lushington	71,550.00	5.2%
Repayments to IGI Business Partners	30,000.00	2.2%
Rent & Office Expenses	13,034.99	1.0%
Cash	11,400.00	0.8%
Other	6,000.00	0.4%
Total Outflows:	<u>1,359,662.07</u>	99.2%

[108] The Source and Use Analysis was created for a period of time that goes beyond the Material Time. For example, in the Account Inflows, all of the funds in the “Other” category came into the account after the Material Time. In Account Outflows, there are \$5,700 included in “Payments to IGI ‘Employees’” made after the Material Time and \$1,550 included in “Terence Lushington” paid after the Material Time. However, the payments totalling \$229,453.10 to Z2A were all made during the Material Time.

RCT and Listing on the Frankfurt Stock Exchange

[109] Toledano testified that Staff came across RCT share certificates during a search in their investigation, which certificates were seized as part of Staff’s search.

[110] In their investigation Staff contacted the Deutsche Börse AG regarding RCT’s listing on the Frankfurt Stock Exchange. Staff was informed that RCT was included in the Open Market Segment on the floor of the Frankfurt Stock Exchange from June 18, 2008 to December 31, 2009 and that only two prices with volumes were determined within that period, each involving 1,000 shares. The first of the two transactions was on June 20, 2008 for 1,000 shares at €1.15 and the second transaction was on July 18, 2008 for 1,000 shares at €1.13. Staff’s contact at the Deutsche Börse AG confirmed that there were only the two trades in RCT on the floor in the Frankfurt Stock Exchange.

Heritage Trust

[111] Heritage Trust provided Staff with copies of RCT share certificates and invoices to RCT for the period of December 31, 2007 to March 31, 2011. During this time, Heritage Trust invoiced RCT for amounts totalling \$24,976.15.

[112] A Detailed Transaction Journal for RCT was sent to Staff by Heritage Trust. It notes all issuances and cancellations of shares in RCT as of April 18, 2011. Also included in the documents provided to Staff by Heritage Trust is an excerpt from the Detailed Transaction Journal for RCT which notes two issuances of RCT shares to Hewitt. The first, on January 8, 2009 is an issuance of 5,964 shares; the second, on April 23, 2009 is an issuance of 2,000,000 shares from treasury.

Contact with Reid and Tummonds

[113] Toledano confirmed that she sent a letter to Tummonds on April 24, 2009 requesting information about RCT and its involvement in the IGI Program. On May 6, 2009, Toledano received a response from RCT to her April 24, 2009 letter (the May 6, 2009 Letter to Staff).

[114] Toledano reviewed an investigation note she created in June 2009 which documents when she first became aware of Reid. Reid left her a message on May 29, 2009 indicating that Tummonds had received her emails and had asked Reid to call her. On a later phone call, Reid informed Toledano that Tummonds was very ill and that although Reid was not an employee of RCT, he could speak with Toledano on Tummonds’ behalf. Toledano received subsequent email

communication from Reid in which he stated that he might be able to assist her with her inquiries.

[115] On September 25, 2009, Tummonds emailed Toledano a copy of a September 18, 2009 press release in which RCT announced that it was no longer operational and had ceased all business activity.

[116] Toledano had originally attempted to schedule an interview with Tummonds, but due to health problems, he was unable to attend. Instead, Tummonds requested by letter sent November 29, 2010 that the Commission provide him with questions in writing, to which he would respond. Tummonds also noted in this letter that:

Present recollection of facts and past events is limited, especially tired or under stress; and my memory of events at which I understand to be the relevant time, as it relates to your enquiries, I am extremely limited as I was going through a very acute stage of this illness, when it was not being effectively diagnosed or treated. You are undoubtedly aware that I was not in effective control of the company at the time.

On November 30, 2010, Staff provided Tummonds with a letter that detailed a number of questions that they had intended to ask him at his interview. Also enclosed in the letter were several documents that Staff obtained through its investigation to which the questions in the letter refer.

[117] Toledano testified regarding Tummonds' handwritten responses to the questions posed by Staff in their November 30, 2010 letter (the November 30, 2010 Tummonds Response). Tummonds stated that he became aware of IGI some time in the beginning of 2009, but that he was not familiar with what they did. Tummonds noted that he had no memory of telling Hewitt that RCT was going to become involved in the IGI Program.

[118] During cross-examination, Toledano confirmed that Staff made many efforts to contact Tummonds, but never actually met him because he was too ill to attend for his voluntary interview. Toledano noted that in May 2009, Tummonds retained a lawyer, with whom Staff communicated on his behalf. Toledano testified that Tummonds' lawyer confirmed that the May 6, 2009 Letter to Staff was indeed from Tummonds and that Tummonds confirmed in a telephone conversation that he faxed his handwritten notes in the November 30, 2010 Tummonds Response.

[119] Toledano explained that she initially made requests to interview anyone in a management capacity with RCT and was told by Reid that he was the only one Tummonds trusted to deal with the Commission and he was the only person made available to the Commission. She further requested of Tummonds' lawyer that the Commission be referred to someone else from RCT if Tummonds was not available. Tummonds' lawyer referred Staff to Reid.

RCT Shares Issued in December 2008 and January 2009

[120] Toledano prepared a document summarizing the RCT shares issued during December 2008 and January 2009 based on Heritage Trust's records and the donor lists provided by Reid.

The document notes the date of the issuance or treasury order, the name in which the shares were issued, the certificate number, the amount of shares and whether they were included on a schedule provided by Reid to the Commission. In total, she noted that 7,989,199 shares were issued in this period.

[121] Toledano also noted that of these share issuances, approximately 97 individuals (not including Mobiliare) were issued RCT shares from treasury during December 2008 and January 2009.

[122] Toledano also prepared a document summarizing the RCT shares issued in connection with Mobiliare's exercise of options. She testified that this document was prepared based on information provided by Reid in the form of lists of donors in whose names shares were to be issued. I note that when compared with the Heritage Trust records, there appears to be some duplication with respect to share issuances from treasury. In total, Toledano calculated that 11,478,180 RCT shares were issued in connection with the exercise of Mobiliare's options. Toledano explained the inconsistency between this number and the number of shares listed in the other documents she prepared as being the result of duplication in the documents provided by Reid and the inclusion of some shares issued outside the December 2008 to January 2009 period. I note that it also includes issuances of treasury shares that were subsequently cancelled.

D. Christine Hewitt

[123] Hewitt testified in chief on the third day of the Merits Hearing. On the same day, Staff began cross-examination. On the fourth day of the hearing, Hewitt's counsel informed the Panel that Hewitt was ill and unable to attend the hearing to continue her testimony. As a result, the hearing was adjourned. On the fifth day of the hearing, the following week, the hearing was once again adjourned as counsel for Hewitt again informed the Panel that Hewitt was unable to attend. On the sixth day of the hearing, Hewitt was again unable to attend citing medical reasons. Hewitt attended to complete her testimony on the seventh day of the hearing, completing her cross-examination after Morais' testimony.

Z2A

[124] Hewitt testified that she started Z2A in 2007, expecting the company would provide general corporate services relating to the incorporation of new companies. Z2A then became involved in "EDGARizing" services for companies filing statements with the U.S. Securities and Exchange Commission ("SEC").

Hewitt's Work for IGI

[125] Hewitt testified that she first became aware of IGI when Lushington called her in late November 2008 proposing to meet to discuss a possible business arrangement with respect to corporate services that Z2A could provide. According to Hewitt, Lushington explained to her that IGI was organizing a gifting program for charities and arrangements had been made with a philanthropist he was dealing with at the time. Lushington told Hewitt he was looking for someone to help IGI with corporate services. Specifically, Lushington would send her a list of donors and she would make arrangements to have shares issued in the name of specific donors and deliver them back to his office.

[126] When asked when she spoke to Reid about the IGI Program, Hewitt replied:

Lushington was already aware of this particular client. And when he talked to me, I said to him, "I already know this client. I mean, this RCT Global Networks." And then, then I talked to Bob Tummonds, just the one time. And so Drew was going to do the work for the company. And I said, That's good because you can deal with the transfer agent. You know, I didn't know the transfer agent at all.

(Hearing Transcript, October 5, 2011 at page 93, lines 11 to 18)

[127] Hewitt testified as to her role in the IGI Program. According to Hewitt, she would get the list of donors names from IGI, which she would then pass on to Reid by email. Reid was responsible for obtaining the share certificates from the transfer agent based on the list Hewitt provided. Reid would then give Hewitt the share certificates and Hewitt would check the names and share quantities against the list from IGI. Finally, Hewitt would deliver the share certificates to the IGI office. The lists from IGI would include the person's name, the donation amount and the number of shares to be issued to each person.

[128] Hewitt confirmed that the November 26, 2008 agreement between Z2A and IGI identified in evidence by Toledano was the agreement she made with Lushington (see paragraph [103]). According to Hewitt, at the time she signed the agreement with Lushington, she had no idea how much money she would earn or what the length of the program would be. During cross-examination, Hewitt confirmed that her agreement with IGI was that she would receive 10% of the donations as compensation. She also confirmed that, at the time of the IGI Program, she was aware that IGI was using commissioned sales agents, who also received a percentage of the cash amount provided by the donors. During the IGI Program, Hewitt learned that commission sales agents, or at least Solutions 21, were receiving 50% of the amounts provided by the donors.

[129] Hewitt testified that she began providing IGI with services in the first week of December 2008 and that the last transaction she worked on for IGI was during the first week of January 2009. In that period, Hewitt testified that she received names of more than 100 individual donors who were to be issued share certificates.

[130] Hewitt also testified that, following the Material Time, she continued to arrange for the consolidation of RCT share certificates held by Furry World and the reissuance of RCT shares to IGI donors whose original share certificates were seized by the Commission during its investigation into IGI. This conduct falls outside the timeframe for the allegations, and I do not give it any weight in my determination of the ultimate question of whether the Respondents' conduct during the Material Time was contrary to Ontario securities law.

[131] Hewitt denied having guaranteed to Black that the RCT shares would be valuable and that it would be a good investment and profitable for the charities. She testified that she was never led to believe that part of her job for IGI involved promoting IGI or finding donors for IGI.

[132] During cross-examination, Staff questioned Hewitt about the content of certain documents Staff obtained during their investigation. One document, IGI marketing material to be provided to potential donors and their advisors, describes the IGI Program as follows:

A non-resident Swiss philanthropist initiates a gifting program by which he would match a Canadian Donor's cash gift to one of seven or so recommended registered Canadian charity [*sic*].

When presented with this document, Hewitt testified that she was not sure whether Tummonds or another donor was a non-resident Swiss philanthropist, but that this was not information that she would question. She noted that she only had the opportunity to speak with Tummonds once about the IGI Program. She had, however, met Tummonds previous to her work with the IGI Program.

RCT

[133] Hewitt testified that she first became aware of RCT in early 2008 when Tummonds was looking for help taking RCT public:

RCT Global Networks was going around looking for help to take them – for someone to help with the paperwork for them to go public. And they were doing this for quite a while. They were first looking to go on the Pink Sheets – that's the U.S., one of the U.S. platforms – and then later on they changed their minds and they wanted to go on the Frankfurt platform. So when they came to me, they asked me if I could help them with their paperwork.

(Hearing Transcript, October 5, 2011 at page 101, lines 3 to 11)

[134] In cross-examination, Hewitt testified that Tummonds was possibly referred to her by Preston Shea (“**Shea**”), a lawyer with whom she previously had a personal relationship. Similarly, the owner of the other company that had shares involved in the IGI Program, Latin Media, was a client of Shea's. Hewitt knew Shea prior to November 2008.

[135] Hewitt testified that she initially met with Tummonds, Cullen and Keown. She informed them that in order to go public, they would need a legal opinion for the SEC and a SEC approved auditor. Hewitt referred to Tummonds to a lawyer, who prepared a legal opinion for RCT with respect to listing. RCT paid Z2A \$2,000 which Hewitt gave to the lawyer to cover the legal fees. After the opinion was obtained, RCT changed their minds about listing in the U.S. After this, Reid attended at Z2A offices with Tummonds to take back RCT's incorporation binder, so Hewitt knew Reid had some association with RCT.

[136] Hewitt's next contact with Tummonds and RCT was with respect to the IGI Program in November 2008 approximately one week after she initially spoke with Lushington, who mentioned to her that RCT was involved in the IGI Program. After speaking with Lushington, Hewitt telephoned Tummonds and mentioned that she understood he was involved in the IGI Program and that IGI had asked her to contract to do work for it.

[137] Hewitt testified that she understood that the RCT shares were being donated. Her initial understanding was that the RCT shares would come directly to her from RCT. She only became aware that many of the shares provided to donors were shares initially optioned by Mobiliare after the Commission began its investigation. As far as she was concerned at the time, the shares she obtained were directly from RCT.

Drew Reid and Mobiliare

[138] Hewitt testified that Reid had come to her asking if she had any work he could do since he needed work desperately. When Lushington proposed the IGI Program, Hewitt told Reid it was his chance to do some work. She offered him half of whatever IGI paid her; Reid would deal with the transfer agent and deliver the share certificates to Hewitt, who would then deliver them to IGI. However, Hewitt's testimony as to how she and Reid became involved in the IGI Program is inconsistent. During cross-examination, Hewitt testified:

I got in touch with Bob Tummonds after I met with IGI, and then after that, Mr. Reid came to me and said, here. This is something that we could do definitely, because I could help you with this. Mr. Reid came to me. So we talked about that, and he said, I can definitely help you with this, Christine, because I can do the transfer agent part.

(Hearing Transcript, November 8, 2011 at page 88, line 19 to page 89, line 1)

When it was put to Hewitt that this was inconsistent with her testimony in chief that she presented the opportunity to Reid, Hewitt insisted that it was Reid who approached her.

[139] During her testimony in chief, Hewitt described Reid's role in the IGI Program as follows:

... he was not a representative of IGI. And he was, he as doing it in – he wasn't even a representative of RCT. He was doing it because he asked me initially that he needed some work and that if I could help him out if any work came my way, if I could help him out because he needed work.

(Hearing Transcript, October 5, 2011 at page 109, lines 10 to 15)

Hewitt's statement is not consistent with the her evidence regarding Reid's role as a contact on behalf of RCT for Heritage Trust, which relationship appears to have pre-dated Hewitt's involvement with the IGI Program.

[140] Hewitt testified in chief that she knew that Reid had some association with RCT, being associated with Tummonds, Cullen and Keown, but that his connection to RCT was never made clear. During cross-examination, Staff read in an excerpt of the transcript of Hewitt's August 2009 voluntary interview:

“Besides Mr. Tummonds, was there anyone else at RCT that you dealt with?

“A. Yeah.

“Q. Who was that?

“A. Because Mr. Tummonds got sick, I think he – and I have documentation for this as well, he assigned Drew Reid to do whatever is needed on his behalf.

(Hearing Transcript, November 8, 2011 at page 94, lines 11 to 18)

[141] Hewitt further testified that Reid had told her that he could not have a bank account, so he asked her to make all payments through his company Mobiliare by bank draft because Reid told her he could not cash cheques. Hewitt testified to having paid Reid about \$116,000, which represented 50% of the money she received from IGI. Hewitt denied that that the payments made to Reid were payments for shares rather than payments for services provided by Reid. When questioned about the large size of the payments made to Reid and whether she had expected to make as much money as she did from IGI, Hewitt replied:

No, absolutely not. I had no idea'r about the velocity of this payment of this particular program. And I really, really did not know what work was going to be so much money in such a little time. I really didn't. I did not know that at all. I was not expecting that at all. And just as it went along, that's what happened, but it was not something that was anticipated, nobody even mentioned that to me, earlier even, at all.

(Hearing Transcript, October 5, 2011 at page 115, lines 17 to 25)

[142] In cross-examination, Hewitt was taken to the list she prepared outlining the payments made to Mobiliare between December 12, 2008 and April 29, 2009. Staff took Hewitt to the transcript of her voluntary interview, at which time she told Staff that she had to pay office costs and overhead expenses in relation to the IGI Program, but did not mention payments to Reid. Hewitt testified that she was not sure whether she told Staff about her 50-50 agreement with Reid prior to the hearing, but stated that she was never hiding this information. However, Staff read into the record an excerpt of the transcript of Hewitt's voluntary interview in which she described the work Mobiliare did for Z2A:

“QUESTION: So how much was Mr. Reid getting paid for this leg work he was doing?

“ANSWER: I gave him for running around, I'm not sure how much he wanted. I paid him something. I don't think it was too much, I'm not sure. I'll check my records and let you know.”

(Hearing Transcript, October 5, 2011 at page 196, lines 18 to 23)

[143] Staff also took Hewitt to an earlier excerpt of the transcript of her voluntary examination by Staff during their investigation in which Hewitt states that she did not recognize the name “Mobiliare Argenti Limited” and had never heard of it before. Hewitt testified:

When I reflect back at this voluntary interview, I think that what I was being asked was, Do you remember these names on the shares that we made out to a list, that was what I understood when she asked me that.

(Hearing Transcript, October 5, 2011 at page 186, lines 5 to 9)

And further:

That I did not see this company, these company names, because she was reading out different company names that were made out on the list on the IGI program. That was what I understood at the time.

(Hearing Transcript, October 5, 2011 at page 186, line 24 to page 187, line 3)

[144] At the conclusion of her first day of testimony, I asked for clarification about Z2A's payments to Mobiliare in April 2009 given that Hewitt had previously testified that after January 2009 she did no work for IGI, provided no services to RCT and had not seen Reid. She replied at that time that she was not sure what the payments were for, but that she would check.

[145] When her testimony resumed over a month later, Hewitt testified that these payments were related to re-issuances of shares for Solutions 21. Hewitt explained that Solutions 21 was the "master agent" for IGI and that many of their donors' share certificates were amongst the documents that the Commission seized from IGI's offices in January 2009 pursuant to the execution of a search warrant. Hewitt arranged for the share certificates to be re-issued to the Solutions 21 donors. Hewitt testified that eventually the old share certificates would have to be cancelled, but that the certificates re-issued for Solutions 21 in this time period were new issuances of shares.

[146] According to Hewitt, Solutions 21 contacted her and provided her with a list of names and the number of RCT shares to be issued in each name. The process followed was the same as had earlier been done in the IGI Program, whereby the list would be passed on to Reid who would obtain the share certificates from Heritage Trust and provide them to Hewitt. Hewitt testified that her payment arrangement with Reid for these services was the same as it had been when she was working with IGI. Solutions 21 paid Hewitt approximately \$135,000 over a seven-day period from April 22, 2009 to April 29, 2009. During that same period, Hewitt paid Reid approximately \$40,000, which was about 30% of the amount she received from Solutions 21. She would make payments to Mobiliare on the same days as she received payments from Solutions 21.

RCT Resolution Authorizing 2,000,000 shares to Hewitt

[147] Hewitt was referred to previous testimony regarding the authorization of a share issuance to her and to an April 10, 2009 RCT Resolution previously introduced into evidence during Reid's testimony. Hewitt claimed that she never had any discussion with RCT or Tummonds about an additional form of compensation from RCT.

[148] Hewitt testified that she first became aware of the authorization of a share issuance to her when a share certificate in her name for 2,000,000 shares was included in the lists that Reid

delivered from Heritage Trust in December 2008. According to Hewitt, she immediately called Reid to ask him about it and he responded as follows:

So he said to me, we just want to thank you for all the work that you've been doing for us and we just want to say thank you. We don't want to leave you out. We want to thank you. So we just thought we'd issue you some stock.

(Hearing Transcript, October 5, 2011 at page 118, lines 13 to 17)

[149] When questioned about the timing of her discovery in December 2008 when the RCT Resolution was dated April 10, 2009, Hewitt replied that the Resolution was made months after the actual share transfer. When it was put to Hewitt that the Heritage Trust Detailed Transaction Journal notes the 2,000,000 share issuance to Hewitt on April 23, 2009, Hewitt maintained that she had seen her name on a list and that 2,000,000 shares had been issued to her in December 2008. However, I note that the Heritage Trust Detailed Transaction Journal for RCT notes two issuances of shares to Hewitt. The first, for 5,964 shares occurred on January 8, 2009 and the second, for 2,000,000 shares, occurred on April 23, 2009.

[150] Hewitt testified that as of April 10, 2009, when the RCT Resolution for the 2,000,000 share issuance was dated, she was not a friend of Tummonds and she and Z2A were no longer doing work for RCT or Tummonds. At the point when the transfer was being made, there was no obvious reason for it being done; Hewitt had no business relationship with RCT or IGI. Hewitt testified that she did not have any ongoing contact with Tummonds or Reid after January 2009. Hewitt's testimony on this point is inconsistent with her evidence that she arranged for the issuance of RCT shares with Reid in the names of individuals supplied by Solutions 21 in April 2009.

[151] Hewitt further testified that she has never done anything with the 2,000,000 RCT shares that were issued in her name. Although Hewitt and Reid provided inconsistent evidence regarding the 2,000,000 share issuance, the circumstances surrounding the share issuance and the details of the issuance are not central to the issues to be determined. I further note that the 2,000,000 share issuance occurred after the Material Time, according to the Heritage Trust records.

Peter Black

[152] Hewitt first met Black some time in mid-December 2008 at the IGI offices, after she began doing work for IGI. Lushington introduced Hewitt to Black and others.

[153] Hewitt testified that in January 2009, she made an appointment to meet with Black at her office to discuss amalgamating his share certificates. Hewitt agreed to assist Black with the consolidation of his share certificates and also provided him with other corporate services. She testified:

... So he wanted to, first of all, get to know, through my referrals, to get to know my referral group, so I introduced him to my lawyers, which was Yung Lee and Nick Wright, who he continues to use to this day for his projects. And so I introduced him to them. And he brought on another, you know private business

item, which was he wanted us to do work for. So he used our boardroom. And we got a marketing group. I referred him to one of my advertising groups that I use. So they came in, used our boardrooms and times and Julie [Morais] made all the appointments for him. And he brought a presentation and asked them to raise \$75 million for him.

(Hearing Transcript, October 5, 2011 at page 130, lines 1 to 13)

[154] Hewitt testified that she was present at all the meetings that Black had with potential clients at her office and that there were about four meetings in total. Hewitt testified that she paid for the cost of using the boardrooms and that Black did not reimburse her. In addition to the lawyers, Hewitt also introduced Black to an international businessman and lawyer in Portugal, Anthony Diamond, to help with “doing something with his certificate”.

[155] With respect to the share consolidation work she did for Black, Hewitt testified that Reid dealt directly with the transfer agent. Hewitt estimated that this was done in January 2009. However, during cross-examination, Staff took Hewitt to a copy of the RCT share certificate for 4,202,813 shares issued in the name of Furry World and dated June 4, 2009. Hewitt then confirmed that she charged Furry World \$3,234 for her work done with respect to this consolidation of its share certificates into one share certificate.

[156] Hewitt testified that her payment to Reid for the work he did in connection with the share certificate consolidation was not the \$921 identified on the list of payments from Z2A to Mobiliare that she had previously provided to Staff. The copy of the cheque Hewitt provided that corresponded with this payment was unsigned and Hewitt testified at the Merits Hearing that the amount Z2A paid to Reid was actually greater than \$921 and that the unsigned cheque dated June 12, 2009 was never actually given to Reid.

[157] Staff also referred Hewitt to an April 2009 letter that Black wrote to Tummonds, in which Black stated: “When conducting due diligence on participating in your direct philanthropy, we conducted interviews with a person purporting to be your liaison, namely Christine Hewitt of Z2A”. Hewitt denied that Black would have been under the impression that she was the liaison for RCT and stated that the only reason he came to her office for assistance was that he would have seen her arriving at the IGI offices with the share certificates. Hewitt insisted that Black’s approach to her had nothing to do with the fact that she represented herself as a liaison for the philanthropist and denied doing so. Hewitt was referred to the invoices Z2A provided to IGI which note “FEES for Liaison / Intermediary services rendered” in the matter relating to “RCT Global Networks philanthropist / donee contribution ...” and Hewitt testified:

The term liaison was a term that IGI used, you know, if you look at their documentation. And whenever I would go in there, he – Terence would say, well, you know, if you’re waiting for your shares, I mean, she’s our liaison person, but it’s a term.

...

I’m not a major shareholder. I was asked to work by this company, a marketing company. They called it liaison. Okay. So what? So I, you know, got the shares,

delivered it to IGI, so that was a liaison role. But I had no at all – no saying at all within this company of RCT Global Networks at all.

(Hearing Transcript, November 8, 2011, page 78, line 8 to page 79, line 9)

[158] I find that Hewitt’s testimony was at times unreliable and specifically note the following inconsistent or unreliable testimony:

- Hewitt initially testified that she offered Reid the chance to work with her on the IGI Program after he approached her asking if she had any work he could do. Hewitt later testified that Reid came to her and offered to help her with her work in the IGI Program by dealing with the transfer agent.
- Hewitt’s accounts of why funds were paid to Mobiliare are also inconsistent. Hewitt initially told Staff in her voluntary interview “I paid him something. I don’t think it was too much, I’m not sure” for doing “leg work”. Hewitt maintained in her testimony at the Merits Hearing that the payments to Mobiliare were for services provided by Reid, and were not for RCT shares. Hewitt also testified that she offered Reid the chance to do some work and offered half of what IGI paid her.
- On her first day of testimony, Hewitt testified that she did no work for IGI, provided no services to RCT and did not see Reid after January 2009. However, further to my question to her about this in light of the evidence of payments to Mobiliare later in 2009, Hewitt testified that she was in contact with Reid about reissuances of RCT shares to IGI participants whose share certificates had been seized during the Commission’s investigation.

E. Julie Morais

Work at Z2A

[159] Morais was called as a witness by Hewitt. Morais testified that she met Hewitt on December 24, 2008, at which time Morais mentioned to Hewitt that she was not working and Hewitt told Morais she was looking for someone to work for her. Morais started working for Hewitt at Z2A on January 5, 2009 as an office manager and continued working there until September 2009.

Furry World and Peter Black

[160] Morais testified that Black was a client of Z2A. She testified that it appears that she met Black in January 2009, but did not recall this meeting; she did recall seeing him at the Z2A offices in March 2009.

[161] According to Morais, Z2A provided Black with administrative services relating to filling out receipts for donors to his charity and work involved in the consolidation of shares that were donated to Furry World. Morais testified that Z2A did an extensive amount of work on his behalf. In addition, Morais also arranged for Black to have the use of boardrooms in the business

centre in which Z2A was located. Morais would deal with the business centre on behalf of Black, booking meeting rooms and arranging for refreshments at the meetings.

[162] Morais testified that Z2A was invoiced for the boardroom bookings and refreshments and it was her understanding Black would pay Z2A. However, Black never paid for these services. The only payment received from Black was a payment of approximately \$2,500 for services in relation to the consolidation of share certificates. When presented with a copy of an invoice from Z2A and a cheque from Black to Z2A, both in the amount of \$3,234, Morais agreed that this was the one invoice she referred to as having been paid by Black.

The IGI Program

[163] Morais testified that Z2A was involved in the IGI Program simply from a corporate services standpoint. She described Z2A as an intermediary, obtaining a list of people's names from IGI, and providing that list to Reid, who would then provide Z2A with share certificates. Reid would invoice Z2A for the services he provided and Z2A made payments to Mobiliare for the service he provided. Morais testified that Reid would have been providing these services in the time period of April or June 2009, which is outside the Material Time.

[164] According to Morais, the only involvement she, Z2A or Hewitt had with any corporate shares was consolidation of the share certificates for Black and obtaining share certificates for donors. Morais further testified that neither she nor Hewitt attended at the office of a transfer agent, but that Reid was responsible for attending the transfer agent's office.

[165] Morais testified that since she only started work at Z2A on January 5, 2009, she was not involved in the preparation of invoices sent to IGI in December 2008. She created the electronic copies of the invoices in the computer system, but was not working for Z2A at the time that IGI was invoiced in December 2008.

[166] During cross-examination, Morais testified that she was not aware that Z2A was providing any services to IGI after January 2009, but that the payments made to Reid were provided in response to invoices he sent to Z2A. The only service she was aware that Reid provided was picking up shares at Heritage Trust and delivering them to Z2A. No invoices from Reid to Z2A were presented in evidence.

IV. ISSUES

[167] The issues to be determined are:

1. During the Material Time, did Hewitt and Z2A trade in securities of RCT without being registered to trade in securities contrary to s. 25(1)(a) of the Act?
2. During the Material Time, did Hewitt, being a director and officer of Z2A, authorize, permit or acquiesce in the commission of the violations of sections 25 and 53 of the Act by Z2A?

V. SUBMISSIONS

A. Staff's Submissions

[168] Staff alleges that Hewitt and Z2A performed acts in furtherance of trades in RCT shares through the IGI Program by arranging for the issuance of RCT shares in the names of “donors” and that, in return, Z2A received a commission equal to 10% of the cash “donated” by the participants. Staff alleges that Hewitt obtained RCT shares by purchasing them from Mobiliare.

[169] Staff submits that in the case of about 96 participants in the IGI Program, the RCT shares they received as a result of the acts of Z2A and Hewitt were treasury shares and that the distribution of these treasury shares was not qualified by a prospectus.

Hewitt's Knowledge of and Role in the IGI Program

[170] Staff submits that Hewitt was very knowledgeable about the IGI Program during the Material Time. She received initial promotional material at the beginning of her relationship with IGI when she met Lushington at the end of November 2008. Staff submits that Hewitt knew that Tummonds, who she alleged was the philanthropist under the IGI Program, was not a “non-resident Swiss philanthropist” as described in IGI promotional materials.

[171] Staff further submits that Hewitt was aware that the charities involved in the IGI Program did not keep most of the money they received from donors, but that, in addition to the 10% of cash received by Z2A, commission sales agents were also to be paid a commission that was, at least in once case, 50% of the cash donated. Staff submits that although it might be reasonable for a “donor” to assume that some amount of the donation might go to administrative costs, it would not be reasonable for a “donor” to assume that more than 20% of a donation would go to administrative costs, and certainly not 90%.

[172] Staff alleges that Hewitt presented herself as a representative or liaison of RCT, as Black testified during the hearing. Staff submits that Hewitt was argumentative and evasive in cross-examination in response to questions relating to why Black was seeking her assistance in January 2009, refusing to acknowledge that Black came to her because he thought she had a relationship with the alleged philanthropist.

Compensation Structure

[173] Staff submits that Z2A's compensation structure is consistent with the key role played by Z2A and Hewitt in the IGI Program. Staff notes that Z2A's compensation was not based on hours worked and expenses incurred, but was based on the success of the IGI Program such that Z2A received \$230,453.10 for work performed over an 18-day period.

[174] Staff submits that the compensation structure is consistent with Z2A performing acts in furtherance of trades in RCT shares by supplying the RCT shares that were traded through the IGI Program. Staff notes that Heritage Trust, which provided purely administrative services in

relation to the issuance of RCT shares invoiced for less than \$5,000 for the services during the Material Time.

Credibility

[175] Staff submits that in cases where the balance of probabilities is the standard of proof, provided the trier of fact has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party. In such cases believing one party will mean explicitly or implicitly that the other party was not believed on the important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 at paras. 85-86 (“*McDougall*”).

[176] Staff submits that Reid’s evidence that he sold RCT shares to Hewitt and Z2A is in harmony with the preponderance of probabilities (*Springer v. Aird & Berlis LLP* (2009), 96 O.R. (3d) 325 at para. 14) in this case. Staff further submits that his evidence is corroborated by documents including:

- (a) the cheques Reid received from Z2A in amounts too large to be for courier services;
- (b) documents that demonstrate Reid was in a position to sell RCT shares to Z2A and direct Heritage Trust to issue RCT shares in donor names, such as the Authorization from RCT, the Option Agreements and handwritten responses from Tummonds to Staff; and
- (c) documents that demonstrate that RCT shares were issued in donor names through the cancellation of Mobiliare shares or issuance of treasury shares.

[177] Similarly, Staff submits that Black’s testimony that Hewitt represented herself as being a representative of RCT is credible and is corroborated by a letter Black wrote to RCT in April 2009, well before the dispute arose between Black and Hewitt and by a December 2008 document obtained by Staff during its investigation that is witnessed by “Christine Hewitt (for Philanthropist)”.

[178] Staff submits that assessments of credibility can be informed by a witness’s demeanour. Staff refers to *R. v. Anderson*, [2007] O.J. No. 2622 at para. 19, in which the court noted that the trial judge had relied upon her observations that under cross-examination the accused was “anticipatory and arrogant and at times argumentative. She went on to indicate ‘the words themselves fail to adequately reflect the tone and timing and the nature of the immediate, clipped times [*sic*] confrontational responses”.

[179] Staff submits that Hewitt’s evidence is not credible, and was at times self-contradictory, at odds with documentary evidence or simply not plausible. Staff alleges that, despite the fact that Hewitt repeatedly stated that she found out in December 2008 that two million RCT shares had been issued in her name, the RCT resolution is dated April 2009 and it is clear from the transfer agent records that she could not have found out about these shares being issued in her name until at least April 2009.

[180] Staff alleges that Hewitt's explanation as to how Reid was able to direct Heritage Trust is not plausible. Staff notes that Hewitt explained that based on her "experience with the paperwork for different companies", she understood that there would need to be a "treasury order to the transfer agent from the signatory of the company" in order for shares of the company to be issued by the transfer agent. Staff submits that Hewitt's explanation that Reid was able to provide instructions to the transfer agent because "he knows the transfer agent" and because he is a shareholder of RCT is not plausible based on common sense and based on Hewitt's own understanding of what a transfer agent requires before issuing shares of a company.

[181] Staff further submits that Hewitt's explanation of the basis for the payments to Mobiliare was also not plausible. Staff refers to Hewitt's voluntary interview conducted prior to the hearing in which she told Staff that she would forward donor lists to Reid, who then attended at Heritage Trust's offices, obtained shares in the names of the donors and delivered the certificates to Z2A's offices, "So it's just like having a courier person". Given that Reid lives approximately one km away from Z2A's offices and Z2A's offices are approximately one kilometre away from Heritage Trust's offices, Staff submits that it is not plausible that Z2A's payments to Mobiliare of \$116,391.90 between December 12, 2008 and January 13, 2008 were for courier services.

[182] Staff refers to Hewitt's unambiguous statements during her voluntary interview by Staff that she had never heard of Mobiliare and note that Hewitt never mentioned that she paid Mobiliare 50% of the money she received from IGI when questioned about costs she had to pay, but stated later in the voluntary interview that "I paid him something. I don't think it was too much, I'm not sure." Staff submits that it is not credible that Hewitt did not recognize the "Mobiliare" name because the questioner mispronounced the name, but rather Hewitt denied knowing about Mobiliare because she did not want to reveal the fact that she had purchased RCT shares from Mobiliare as part of the IGI Program.

[183] Staff notes that Hewitt gave three different versions of events as to how Reid became involved in the IGI Program. During her voluntary interview, she advised Staff that because Tummonds was sick, he assigned Reid to do whatever was necessary on his behalf. During her examination in chief, Hewitt testified that Reid had come to her many times to ask if she had any work for him and that this was his chance to do some work (for which she would pay him half of what she received). During cross-examination, she testified that she got in touch with Tummonds after she met with IGI and after that Reid came to her and offered to help with it. Staff submits that the version of events provided by the Respondents in their written submissions, that after meeting with Lushington, Hewitt became aware that Tummonds had provided written authorization for Reid to act on behalf of RCT with respect to the issuing and disposition of shares, is not supported by Hewitt's evidence at the hearing and that there was no evidence to support the proposition that Reid proposed a separate side deal.

Acts in furtherance of trades of RCT securities (s. 25(1)(a))

[184] Staff submits that Hewitt and Z2A knew that a donation to a charity was required before a donor was eligible to receive RCT shares and that more than half the funds "donated" were not retained by the charities but were paid to IGI so that IGI could pay a 10% commission to Z2A and other commissions to sales agents.

[185] Staff refers to National Policy 12-202 – *Revocation of a Compliance-related Cease Trade Order* and submits that gifts must be made *bona fide* and where a disposition of securities is part of a plan or scheme to evade requirements of securities legislation, it should not be treated as a gift (s. 3.2). Staff submits that in this case, a donor’s “donations” ended up almost entirely in the hands of the entity that designed the scheme, IGI, and in return, the donor received shares which the donor could keep or forward to a charity in order to receive a tax receipt.

[186] Staff refers to the Supreme Court’s decision in *Pacific Coast Coin Exchange of Canada v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112, which states in relation to the Act at para. 43 that “such remedial legislation must be construed broadly, and it must be read in the context of the economic realities to which it is addressed. Substance, not form, is the governing factor”. Staff submits that the IGI Program was in substance, if not in form, a trade in RCT securities.

[187] Staff submits that there is sufficient proximity between the Respondents’ conduct and trades in RCT to conclude that the Respondents engaged in acts in furtherance of trades. Staff submits that supplying RCT shares to IGI were acts directly connected to the disposition of RCT securities by IGI and there is no evidence that IGI could have procured RCT shares without the involvement of Z2A, who retained Reid and Mobiliare.

[188] Staff submits that although Hewitt and Z2A did not create or devise the IGI Program, they understood it and played a key role in furtherance of the IGI Program by supplying the RCT shares in the name of participants to the IGI Program. Staff notes that Z2A’s compensation from IGI was directly related to the sales of the IGI Program to potential donors. Staff submits that Hewitt’s instructions to Reid to obtain RCT shares in the names of donors from Heritage Trust and to attend and pick up share certificates at Heritage Trust’s offices formed part of the services that Z2A needed done in order to be in position to supply RCT shares to IGI.

[189] Staff submits that the Respondents’ attempts to minimize the importance of the role played by Hewitt in the IGI Program by alleging that IGI could have dealt directly with Reid or RCT, but there was no evidence Lushington was familiar with Reid before Hewitt brought him into the IGI Program or that Lushington could have obtained shares from RCT. Staff submit that it is not credible that Hewitt and Z2A received a 10% commission for simply cross-checking names upon receipt of lists and certificates from the transfer agent and providing an “arm’s length” element to the transactions.

Illegal distributions

[190] Staff submits that approximately 1.3 million previously unissued shares in RCT were issued to over 90 donors in the IGI Program, which constituted a distribution under the Act. Staff submits that Z2A supplied these RCT shares to IGI and that persons engaged in acts in furtherance of a trade in relation to shares not previously issued have contravened subsection 53(1) of the Act (*Re First Global Ventures S.A.* (2007), 30 O.S.C.B. 10473).

B. Respondents’ Submissions

Response to the allegations against the Respondents

[191] The Respondents submit that Hewitt acknowledged she was aware of the basic elements of the IGI Program, including that 90% of the donated funds were kept by IGI to pay for administrative costs, commissions to agents and for her fees, however there is no evidence that she was privy to more information than was available to the general public, other than the fact that the philanthropist was a resident of Ontario. The Respondents submit that it is reasonable to assume that most donors were aware that a portion of each donation was used for administrative costs, a common practice for charities, and there is no evidence the donors were unaware that 90% of their donations was kept by IGI.

[192] The Respondents submit that Hewitt knew Reid prior to being contacted by Lushington in November 2008 and that he had approached Hewitt previously to enquire about possible work. According to the Respondents, after meeting with Lushington, Hewitt became aware that Tummonds had provided written authorization for Reid to act on behalf of RCT with respect to the issuance and disposition of shares and that Reid had been specifically authorized to work with Hewitt in connection with the IGI Program. The Respondents submit that IGI could have dealt only with Reid, but Lushington wanted to work with Hewitt because she knew how to do the paperwork, was reliable and added an “arms length” element to the transactions.

[193] The Respondents contend that Hewitt’s participation in the IGI Program was minimal: that she forwarded IGI donor lists to Reid, reviewed the certificates obtained by Reid and delivered the certificates to IGI. The Respondents note that Hewitt merely forwarded information from IGI and delivered the issued share certificates to IGI, and did not exercise any independent judgment or control over the issuing of RCT shares. Hewitt’s November 2008 agreement with IGI states that her duties as a liaison were “to process and administer the share certificates to the donor’s name. For administrative services, you will charge IGI 10% of the cash donated”.

[194] The Respondents submit that there is no reliable evidence to support the allegation that Hewitt played a crucial role in bringing Tummonds and RCT into the IGI Program and that it was Hewitt who suggested to Lushington that Tummonds be the new philanthropist. They submit that indirect evidence on this point from statements in Lushington’s settlement agreement with Staff should be given no weight. The Respondents further note that there is no evidence that Hewitt and Tummonds had any significant business or personal relationship, but that Hewitt was provided \$1,000 in early 2008 for assistance in obtaining a legal opinion with respect to taking RCT public.

[195] The Respondents deny that Hewitt purchased RCT shares from Reid or that she “hired” Reid. Rather, they submit that Hewitt and Reid worked as colleagues and Hewitt paid Reid a total of \$112,000. The Respondents argue that the Authorization from RCT gave Reid the general authority to sell RCT shares, but does not prove that he sold shares to Hewitt. Neither do the Option Agreements or the Heritage Trust records prove that Reid sold shares to Hewitt, according to the Respondents.

[196] Hewitt denies that she owned RCT shares and submits that the initials on the April 25, 2009 Direction and Authorization document authorizing Reid to deal with Hewitt’s RCT shares are not hers. Even if she did own RCT shares, the Respondents submit that it is not plausible that she would sign a document related to the transfer of RCT shares to IGI donors when the IGI Program had effectively ceased to exist by April 2009. Similarly, the Respondents submit that

the RCT Resolution dated April 10, 2009, wherein RCT “agrees” to issue 2,000,000 RCT shares to Hewitt as “partial compensation for promotional work and re-organizations work of the company” makes no sense. They submit that there is no evidence Hewitt did any work for RCT, apart from a consultation in early 2008 about RCT “going public” and there was no reason whatsoever for RCT to compensate Hewitt in April 2009. The Respondents submit that this is not a genuine document and that it was fabricated in a clumsy and fuzzy-headed attempt to implicate Hewitt in wrong-doing.

[197] In any case, the Respondents submit it is not clear why it would be illegal or improper for Hewitt to purchase RCT shares.

[198] The Respondents note that Hewitt denies telling Black that she was a “representative” of IGI (by which, I must assume the Respondents mean RCT or the philanthropist), that the RCT shares would make his charity rich, that she worked closely with “the philanthropist” or Tummonds, or that she guaranteed the RCT shares had value and were marketable.

Credibility

[199] Hewitt denies that she was argumentative and evasive during cross-examination or that her demeanour was anticipatory, arrogant or argumentative such that serious doubts about her credibility could be raised.

[200] In response to allegations of inconsistencies and implausibilities raised by Staff, the Respondents submit the following. There is no inconsistency in Hewitt’s explanation of how Reid became involved with obtaining RCT share certificates for donors in the IGI Program; Hewitt met with Reid after her discussion with Tummonds, Reid was assigned to work with Hewitt as a representative of RCT and he proposed a separate side-deal, wherein he and Hewitt would work together to obtain RCT share certificates for donors and deliver them to IGI.

[201] Similarly, the Respondents submit there is no inconsistency in Hewitt’s evidence as to how RCT became involved in the IGI Program. They submit it is not reasonable to conclude that the version of events described in Lushington’s settlement agreement is more credible than Hewitt’s testimony, noting that Staff did not call Lushington as a witness at the hearing and his statements could not be tested through cross-examination. The Respondents submit that in the course of negotiating a settlement with Staff, it was in Lushington’s interest to assign as much responsibility as possible to the remaining respondent and his version of events should be considered unreliable and lacking credibility.

[202] With respect to Hewitt’s initial failure to fully disclose her knowledge of Mobiliare and her business relationship with Reid during her voluntary interview with Staff, the Respondents submit that Hewitt did not initially recognize the name “Mobiliare Argenti” because it was mispronounced.

[203] The Respondents submit that the only evidence pertaining to whether Hewitt claimed to be a “representative of IGI” comes from Black’s testimony (I note that Black’s testimony was that Hewitt claimed to be a representative of the philanthropist). They submit that Hewitt’s testimony that she never identified herself as a representative of IGI is consistent with documents

that describe her as a “liaison” or “liaison-intermediary”, which by definition is not a representative of one party or another.

[204] The Respondents note that Black and Hewitt are involved in Small Claims Court proceedings relating to: (a) Black’s allegation that Hewitt owes him money loaned to her, and (b) Hewitt’s allegation that Black owes her money for corporate services provided to him and his charity. In light of this ongoing dispute, the Respondents submit that Black should not be seen as an independent or unbiased witness. The Respondents submit that Black’s key evidence concerning alleged representations made by Hewitt was not corroborated by any other witness or by any documentation. They submit that it is not plausible that none of the alleged representations were made in writing or referred to in written correspondence.

[205] The Respondents note that Staff’s main witness, Reid, has a very lengthy criminal record for offences involving dishonesty, including fraud and forgery and submit that his evidence is inherently unreliable. The Respondents contend that, as the person who actually obtained the share certificates, Reid’s role in the IGI Program was greater than Hewitt’s. They submit that it is reasonable to infer that Reid agreed to testify in order to avoid being charged with offences under the Act, and, if this is the case, Reid would have a motive for providing damaging evidence against Hewitt, regardless of whether this evidence was true.

VI. THE LAW

A. Standard of Proof

[206] The standard of proof in this case is the civil standard of proof on a balance of probabilities. The Supreme Court of Canada stated in *McDougall, supra* at para. 40:

... I think it is time to say, once and for all in Canada that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.

[207] The Court continued that “the evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test” (*McDougall, supra* at para. 46).

B. Credibility

[208] A significant issue in this case is the credibility of the testimony of some of the witnesses. Staff and counsel for the Respondents both refer to the case of *Springer v. Aird & Berlis LLP* (2009), 96 O.R. (3d) 325 (“*Springer*”), in which the court cites with approval the statement of the British Columbia Court of Appeal at para. 14:

[t]he Judge is not given a divine insight into the hearts and minds of the witnesses appearing before him. Justice does not descend automatically upon the best actor in the witness box. The most satisfactory judicial test of truth lies in its harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case.

[209] Staff cited the decision in *R. v. Anderson*, [2007] O.J. No. 2622 for the proposition that a witness's demeanour may inform the trier of fact's assessment of credibility. While I do not dispute the finding in *R. v. Anderson*, I am cognizant of the potential dangers of relying too much on witness demeanour and, in this case, do not rely on Hewitt's or any other witness's demeanour in coming to my conclusions as to the credibility of their evidence. Ultimately, in assessing the credibility of evidence of the witnesses, I have considered whether that evidence is "in harmony with the preponderance of probabilities disclosed by the facts and the circumstances" of this case (*Springer, supra* at para. 14).

C. Circumstantial Evidence

[210] Some of the evidence before me at this hearing was circumstantial. With respect to circumstantial evidence, *The Law of Evidence in Canada* makes the following statement:

In civil cases, the treatment of circumstantial evidence is quite straightforward. It is treated as any other kind of evidence. The weight accorded to it depends on the strength of the inference that can be drawn from it and this is a task for the trier of fact.

(A. Bryant, S. Lederman and M. Fuerst, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 3d ed. (Toronto: LexisNexis Canada Inc., 2009) at 71)

[211] With respect to circumstantial evidence in the context of securities regulation, the Alberta Securities Commission has stated:

There was no dispute that the evidence before us was largely circumstantial. Kusumoto seemed to suggest that circumstantial evidence alone cannot amount to clear and cogent evidence.

We disagree. ... In many cases involving securities laws, circumstantial evidence will be the only sort of evidence available. It is not to be excluded or disregarded by reason of being circumstantial. If it is relevant it will be received and considered. In some cases, relevant circumstantial evidence will be decisive.

(*Re Kusumoto*, 2007 ABASC 40 at paras. 73-74)

[212] I have considered all the evidence in this case and made determinations as to the weight to be accorded based on the full record before me. I have relied on relevant circumstantial evidence where the inferences arise logically and reasonably from the facts established by the evidence and where they are supported by other evidence in this matter.

D. Unregistered Trading and Illegal Distribution

Unregistered trading

[213] The Commission's mandate is set out in section 1.1 of the Act and is to (i) provide protection to investors from unfair, improper or fraudulent practices and (ii) foster fair and efficient capital markets and confidence in those capital markets.

[214] Subsection 25(1)(a) of the Act stated at the Material Time:

25.(1) No person or company shall,

(a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer.

[215] The importance of registration has been discussed by the Supreme Court of Canada in *Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 at 4:

The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons who therein carry on such a business. For the attainment of this object, trading in securities is defined in s. 14 [s. 1(1)]; registration is provided in s. 16 [s. 25] as a requisite to trade in securities.

Acts in furtherance of a trade

[216] In this case, Staff specifically alleges that the Respondents engaged in acts in furtherance of trades. Acts in furtherance of a trade are included in the definition of “trade” in subsection 1(1) of the Act. Subsection 1(1) defines “trade” as including:

(a) any sale or disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise, ...

...

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing.

[217] There is no bright-line test for determining whether acts by a respondent are acts in furtherance of a trade. The Commission has stated in *Re Costello* (2003), 26 O.S.C.B. 1617 at para 47:

There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitation and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade.

[218] The Commission has found that it should adopt a contextual approach when considering whether a respondent has acted in furtherance of a trade:

In determining whether a person or company has engaged in acts in furtherance of a trade, the Commission has taken “a contextual approach” that examines “the totality of the conduct and the setting in which the acts have occurred.” The primary consideration is, however, the effect of the acts on investors and potential investors. The Commission considered the issue in *Re Momentas Corporation* (2006), 29 O.S.C.B. 7408, at paras. 77-80, noting that “acts directly or indirectly in furtherance of a trade” include (i) providing promotional materials, agreements for signature and share certificates to investors, and (ii) accepting money; a completed sale is not necessary. In our view, depositing an investor cheque in a bank account is an act in furtherance of a trade.

(*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 at para. 131)

[219] Other conduct that has been considered acts in furtherance of trades includes: issuing and signing share certificates and a “shareholder statement”, faxing information about the purchase of shares to investors and instructing solicitors in connection with the issuance and exchange of shares (*Del Bianco v. Alberta (Securities Commission)*, [2004] A.J. No. 1222 (Alta. C.A.) at para. 9); and issuing share certificates in Ontario through an Ontario transfer agent, depositing funds received in payment for the shares in bank accounts opened by the respondents, providing instructions to the transfer agent regarding issuance of the shares from treasury as the directing minds of the issuers and maintaining websites for the corporations which some investors had consulted (*Crowe v. Ontario (Securities Commission)* (2011), 108 O.R. (3d) 410 (Div. Ct.) at para. 35).

Illegal distribution

[220] Subsection 53(1) of the Act states that no person shall trade in a security if the trade would be a distribution of the security unless a preliminary prospectus and a prospectus has been filed. The Act defines a distribution as a trade in securities of the issuer that have not been previously issued (subsection 1(1)).

[221] The Commission has previously found that where respondents have engaged in acts in furtherance of a trade in relation to shares not previously issued, they have contravened subsection 53(1) of the Act (see, for example *Re First Global Ventures, S.A.* (2007), 30 O.S.C.B. 10473 at para. 150).

VII. ANALYSIS OF THE ALLEGATIONS

[222] Staff alleges that the Respondents engaged in acts in furtherance of trades, thereby breaching subsection 25(1)(a) of the Act. Staff also alleges that the Respondents’ conduct was contrary to subsection 53(1) of the Act and constituted illegal distributions of securities.

A. Did Hewitt and Z2A breach s. 25(1)(a) of the Act?

[223] The Respondents have a sufficient nexus to Ontario. Z2A and IGI operated out of Ontario and the representatives of each company conducted their business with respect to the IGI Program in Ontario. Z2A is an Ontario corporation with Hewitt as its president and sole registered director. The evidence is clear that neither of the Respondents were registered to trade in securities in Ontario.

Evidence of the Witnesses

[224] There are a number of credibility issues with respect to certain evidence provided by witnesses in this matter, in particular Reid and Hewitt. The testimony of both conflicted at times with documentary evidence, with the evidence of Staff's communications with Tummonds, with each other and at times with evidence they provided earlier in their testimony. I have addressed other concerns with inconsistencies and the credibility of particular parts of their testimony in my review of the evidence earlier in this decision.

[225] Generally, Hewitt's testimony contained numerous contradictions and was oftentimes inconsistent with information she had previously provided to Staff in her voluntary interview. Hewitt also failed to answer specific questions asked of her by Staff. I note that my assessment of the credibility of evidence provided by Hewitt is not based on her demeanour during the hearing, but is a result of my consideration of her testimony in the context of all the evidence presented at the Merits Hearing.

[226] Similarly, I do not ascribe a great deal of weight to the evidence of Tummonds' communications with Staff. Tummonds was not available to testify at the hearing and I do not have the benefit of any transcript of an interview with Staff in evidence. I do accept, based on the testimony of Ms. Toledano, that Tummonds was very ill, as communicated by his lawyer, and that he was not in control of RCT during the Material Time.

[227] Staff relied on statements made by Lushington in the Lushington Settlement. in questioning Hewitt. Lushington was a co-respondent, did not testify at the hearing and was not made available for cross-examination or questioning by the Panel. Accordingly, the Lushington Settlement will not be considered as evidence against the remaining Respondents, Z2A and Hewitt.

[228] As a result of the issues surrounding the credibility of much of the evidence, I have wherever possible relied on the evidence of bank documents, transfer agent documents, and documents that were sufficiently consistent with Hewitt's responses to Staff in her voluntary interview and with witness testimony during the Merits Hearing.

Reid and Mobiliare

[229] There is not sufficient evidence to demonstrate that Mobiliare exercised options "at the direction of Z2A", as alleged in the Statement of Allegations, or that RCT shares were acquired by Mobiliare for valuable consideration.

[230] In the evidence provided by Staff, Tummonds confirmed that the two Option Agreements were entered into with Mobiliare. The Heritage Trust records support the issuance of RCT shares to Mobiliare, though there was no evidence to support the proposition that any valuable consideration (0.0075 cents per share according to the Option Agreements) was provided by Mobiliare to acquire the shares. There was not sufficient evidence that confirms Reid's assertion that Mobiliare paid for the shares, or that Reid paid bills for RCT. However, Tummonds did know Reid and had used him to help launch RCT's public listing and referred the Commission to Reid when he was ill.

[231] There is no credible evidence to indicate that Tummonds was aware of the IGI Program. The evidence that was before me at the Merits Hearing indicates that no cash or consideration was paid to RCT for the initial issuance of shares to Mobiliare or for the issuances of shares to individual "donors" from treasury. Although Reid claimed that he paid bills on behalf of RCT as consideration for the issuances of shares to Mobiliare, I have only his testimony on this point, which was not supported by any documentary evidence of receipts, invoices or RCT records.

[232] I find, based on the evidence, that Reid, through Mobiliare, was compensated by Z2A for supplying RCT shares issued to "donors" in the IGI Program. I accept Reid's evidence that he followed a process of arranging for shares to be issued to Mobiliare, which shares were subsequently cancelled and issued to individuals named in the lists provided to him by Hewitt. It is clear based on the Heritage Trust records that Mobiliare had brief ownership of most of the shares that were subsequently issued to individuals involved in the IGI Program.

[233] Reid's compensation for this work was provided by Z2A and Hewitt. According to Hewitt's testimony, the arrangement was that Reid would be provided with 50% of the funds she received from IGI. Reid testified otherwise. As noted above, in a September 17, 2009 e-mail to Reid, Hewitt writes: "You did all the leg work from dropping off and picking up and cancelling and amending and surely have all the records in your possession to this effect. You were paid by this office to do the work". Hewitt's e-mail indicates that, from her perspective at the time, Reid was working under her direction.

[234] Regardless of the details of their arrangement, Z2A made payments to Mobiliare totalling over \$116,000 for the approximately one-month period of December 12, 2008 to January 13, 2009. Reid, through Mobiliare, was compensated by Z2A for work done in securing the shares to be delivered to investors in the IGI Program. I reject the suggestion that Reid was paid this amount of money merely for the administrative task of providing simple delivery or courier services.

Hewitt's Role in the trading of RCT Shares through the IGI Program

[235] I accept Black's evidence with respect to his dealings with IGI and find that he was solicited to participate in the program which involved solicitations for donations or gifts of shares on the understanding that Furry World would retain only 10% of the cash donated. Receipt of the shares from the "philanthropist" was an important economic element of the IGI Program.

[236] It is clear on the evidence that shares in RCT were traded through the IGI Program. “Donors” were issued shares in RCT in exchange for funds donated to charitable organizations, with 90% of these funds going to IGI. Reid had no contractual relationship with IGI, acted under Hewitt’s direction and was paid by Hewitt’s company. Hewitt had the contractual relationship with IGI, she directed payments to Mobiliare and she provided the RCT shares to IGI for delivery to participants in the IGI Program.

[237] The evidence of the Detailed Transaction Journal for RCT supplied by Heritage Trust is consistent with the donor lists that Hewitt identified as being provided to her by IGI. The information contained in these documents is also consistent with the invoices Z2A provided to IGI, which in turn are consistent with the payments made by IGI to Z2A.

[238] The evidence demonstrates that, as submitted by Staff, Z2A was paid by IGI for work with respect to, in the words of Z2A’s invoices to IGI, “Liaison / Intermediary services rendered” with respect to “RCT Global Networks philanthropist / donee contribution”, and not for the administrative task of providing basic office services of delivery of documents. Hewitt, through Reid, was IGI’s connection to RCT, and therefore the RCT shares that were delivered to “donors” through the IGI Program. The supply of RCT share certificates for which Hewitt and Z2A were responsible, was an essential element of the gifting scheme run by IGI.

[239] The Respondents’ role in the IGI Program is further evidenced by the November 26, 2008 agreement between Z2A and IGI, which Hewitt acknowledged signing in her examination by Staff. The agreement is signed by Hewitt and Lushington and states:

This Agreement is to facilitate the understanding that Z2A’s relationship between the philanthropists as a liaison is to complete the legal documentation and administer the share certificates to the donor’s name. For administrative services you will charge IGI 10% of the cash donated amount payable within 10 days of receiving the share certificates of the donors.

[240] Hewitt testified that the term “liaison” was used by IGI to describe her role in obtaining the RCT shares and delivering them to IGI, but characterized her role as administrative in nature, obtaining RCT shares and delivering them to IGI. However, the evidence indicates Hewitt’s involvement in the IGI Program went beyond administrative or delivery work. A December 2008 document on IGI letterhead indicates “Christine Hewitt (for Philanthropist)” as the witness. Further, Hewitt provided Staff with a copy of an IGI document addressed to “potential donors and their advisors” which states that “a non-resident Swiss philanthropist initiates a gifting program”. Hewitt was aware that she was delivering shares in Tummonds’ company, RCT, to IGI. Having met Tummonds previously, she was also aware that he was not a non-resident Swiss philanthropist.

[241] In addition, although it is outside the Material Time, I note that Hewitt continued to arrange for the issuance of RCT shares after she purportedly ceased her involvement with IGI and the IGI Program was no longer in operation. Hewitt acknowledged that she facilitated share issuances to individuals to replace RCT share certificates that were seized by the Commission during its investigation into IGI. Hewitt testified that she was no longer involved in providing RCT shares to IGI for the IGI Program after she became aware of Staff’s investigation in January

2009, yet Hewitt continued to offer the same services in delivering RCT shares to “donors” recruited through Solutions 21. I emphasize that I do not take Hewitt’s conduct with respect to Solutions 21 into account in my analysis of the allegations.

[242] During the Material Time, Z2A received \$229,453.10 from IGI for the services provided by Z2A and Hewitt. This amount is consistent with Toledano’s analysis of payments made to Z2A from IGI’s bank account and with the Z2A invoices to IGI that Hewitt provided to Staff. Hewitt did not dispute that Z2A received this amount in remuneration, but supplied Staff with the Z2A invoices. IGI issued cheques in the following amounts to Z2A during the Material Time:

December 15, 2008	\$26,120.00
December 19, 2008	20,000.00
December 20, 2008	35,625.00
December 24, 2009	41,124.00
December 29, 2008	65,628.80
<u>December 31, 2008</u>	<u>40,955.30</u>
Total	\$229,453.10

[243] The above payments are generally consistent with the invoices Z2A provided to IGI. Between December 12, 2008 and December 30, 2008, Z2A issued five invoices to IGI for “Liaison/Intermediary services rendered” in connection to “RCT Global Networks philanthropist / done contribution to Canadian registered charities per CRA 2008 donation incentive program”. The total amount payable in these invoices is \$230,453.10, \$1,000 more than the actual amount paid to Z2A.

[244] The evidence establishes that Hewitt’s compensation, through the above payments made to her company, Z2A, was in the form of a percentage of the funds “donated” through the IGI Program. I do not find it credible that Hewitt would have been compensated at a rate of 10% of all donations, a significant portion of the funds received by IGI, for share delivery alone. Based on the terms of her agreement with IGI, Hewitt was aware that Z2A’s compensation was not specifically related to the amount of work she did for IGI or the number of share transactions required, but was a percentage fee based on the amount of money that donors “donated” to the charity.

[245] In addition to the 10% Z2A received, Hewitt was also aware that agents for IGI, or at least Solutions 21, were receiving 50% of the amounts provided by the donors. The Respondents acknowledge that Hewitt was aware that 90% of the funds donated were retained by IGI. I do not agree with the Respondents’ implication that it would be reasonable to assume that donors may have been aware that 90% of the donations were retained by IGI for “administrative costs”.

Shares to Hewitt

[246] With respect to the issue of the issuance of 2,000,000 shares to Hewitt, I do not believe it is necessary to make a determination as to the facts of this share issuance. The records from Heritage Trust indicate that the shares were issued to Hewitt after the Material Time, despite Hewitt’s testimony otherwise.

Conclusion

[247] In sum, the evidence demonstrates that the Respondents' role in the IGI Program was greater than they submit. Hewitt and Z2A were compensated, at a high rate, for their role in providing RCT shares that were issued to donors in the IGI Program. Hewitt, through Reid, made the RCT shares available to be provided to donors. The Respondents' services went well beyond simple office services or delivery. The Respondents facilitated the issuance of shares to individual donors and hence facilitated the entire IGI Program. Their actions in providing this intermediary service between IGI and RCT and physically ensuring that share certificates were provided in accordance with the lists of donors supplied by IGI constituted acts in furtherance of trades in RCT.

[248] Hewitt's actions in connection to the IGI Program were with knowledge of and in furtherance of the objectives of the IGI Program. Hewitt played an integral role in the IGI Program and, with Reid, provided IGI with access to the RCT securities that are at issue in this proceeding. Absent this connection to RCT, or "the philanthropist" as donors and charities were led to believe, the IGI Program would be missing a key element, issuances of shares to donors.

[249] I therefore find that the conduct of Z2A and Hewitt constituted acts in furtherance of trades in RCT and was contrary to the public interest.

B. Is Hewitt deemed to have breached ss. 25(1)(a) and 53(1) of the Act?

Staff's Allegation pursuant to s. 129.2 of the Act

[250] Staff alleges that Hewitt, being a director and officer of Z2A, authorized, permitted or acquiesced in the commission of the violations by Z2A, contrary to section 129.2 of the Act and contrary to the public interest. Section 129.2 of the Act states:

129.2 Directors and officers – For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, *whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.* [emphasis added]

[251] I found above that Z2A's conduct during the Material Time constituted trades in RCT securities contrary to subsection 25(1)(a) of the Act. Staff makes no direct allegation of a breach of subsection 53(1) by Z2A, but alleges in the Statement of Allegations at para. 13:

The Respondents participated in acts, solicitations, conduct or negotiations directly or indirectly in furtherance of the sale or disposition of securities for valuable consideration, in circumstances where there were no exemptions available to the Respondents under the [Act].

Were Z2A's trades in RCT shares distributions of securities?

[252] The Detailed Transaction Journal for RCT provided by Heritage Trust indicates that, in addition to the cancelled Mobiliare shares issued to donors, some participants in the IGI Program were issued shares directly from treasury. During the Material Time, RCT treasury shares were issued to individuals named on the lists provided by IGI to Hewitt.

[253] Although there is some lack of clarity in the presentation of transactions in the Detailed Transaction Journal, I find that the evidence is sufficiently clear for me to conclude that issuances of RCT shares facilitated by Z2A through the IGI Program during the Material Time were issuances from treasury.

[254] "Distribution" is defined in the Act to include "a trade in securities of an issuer that have not been previously issued" (subsection 1(1) of the Act). Z2A's trades in RCT treasury shares were trades in RCT shares that were not previously issued and were therefore distributions. No preliminary prospectus or prospectus was filed and no receipt was issued in connection with these distributions. Z2A's trades involving RCT treasury shares were therefore distributions in contravention of the requirements of subsection 53(1) of the Act.

[255] Since Staff did not frame the allegation of a breach of subsection 53(1) of the Act to include issuances to IGI "donors" from cancellations of shares held by Mobiliare, I do not consider whether these issuances constituted distributions.

Did Hewitt authorize, acquiesce or permit Z2A's non-compliance with Ontario securities law?

[256] Hewitt was the directing mind of Z2A. During the Material Time, Hewitt was the main contact at Z2A with respect to share issuances in the IGI Program for both IGI and Reid. Hewitt was aware of, and in fact participated personally in, Z2A's conduct that was contrary to Ontario securities law.

[257] As an officer and director of Z2A, Hewitt clearly authorized, permitted and acquiesced in Z2A's breaches of Ontario securities law and is therefore deemed to have breached subsections 25(1)(a) and 53(1) of the Act and contrary to the public interest.

VIII. CONCLUSION

[258] I therefore find that Hewitt's and Z2A's conduct constituted acts in furtherance of trades in RCT, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[259] Pursuant to section 129.2 of the Act, I further find that, in her capacity as a director and officer of Z2A, Hewitt authorized, permitted and acquiesced in Z2A's contraventions of subsections 25(1)(a) and 53(1) of the Act and acted contrary to the public interest.

[260] I find that the \$229,453.10 that Z2A received from IGI for its participation in the IGI Program was obtained as a result of its non-compliance with Ontario securities law. As noted above, Hewitt authorized, permitted and acquiesced in Z2A's contraventions of Ontario securities law as Z2A's sole director.

[261] For the reasons outlined above, I will issue an order directing the parties to appear before the Commission on August 12, 2013 at 10:00 a.m. for the purpose of scheduling a date for a hearing with respect to sanctions and costs.

[262] To protect the personal information of all investors, I also request that Staff provide a redacted version of the record in accordance with the Commission's April 24, 2012 Practice Guideline on *Use and Disclosure of Personal Information in the Ontario Securities Commission's Adjudicative Proceedings*.

Dated at Toronto this 25th day of July, 2013.

"Paulette L. Kennedy"

Paulette L. Kennedy