



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

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

- and -

**IN THE MATTER OF NEST ACQUISITIONS AND MERGERS,
IMG INTERNATIONAL INC., CAROLINE MYRIAM FRAYSSIGNES,
DAVID PELCOWITZ, MICHAEL SMITH, and
ROBERT PATRICK ZUK**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
ROBERT PATRICK ZUK**

PART I - INTRODUCTION

1. By Notice of Hearing dated January 18, 2010, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on January 28, 2010, pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Robert Patrick Zuk ("Zuk") and the other named respondents. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission dated January 18, 2010.
2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Zuk.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated January 18, 2010 against Zuk (the “Proceeding”) in accordance with the terms and conditions set out below. Zuk consents to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III – AGREED FACTS

4. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Zuk agrees with the facts as set out in Part III of this Settlement Agreement.

I. OVERVIEW

5. This proceeding, as it relates to Zuk, centres on the use of an Ontario bank account for the receipt of funds from various residents of the United Kingdom (the “U.K. Residents”).

6. The funds were obtained in furtherance of an “advance-fee” scheme operated by individuals, including David Pelcowitz (“Pelcowitz”), purporting to act on behalf of a fictional company called Nest Acquisitions and Mergers (“Nest A&M”). The solicitations in connection with the “advance-fee” scheme spanned the period from August 14, 2008 to April 8, 2009 (the “Material Time”).

7. During the Material Time, representatives of Nest A&M made false, inaccurate and misleading representations to the U.K. Residents to induce the U.K. Residents to send funds (the “Advanced Fees”) to a bank account in Ontario. The U.K. Residents were told the Advanced Fees were required to facilitate and guarantee the completion of the sale of the securities already held by them for a substantial premium.

8. Zuk was not a representative of Nest A&M and did not communicate with the U.K. Residents. Zuk provided Pelcowitz with access to a bank account in Ontario in to which funds could be sent by the U.K. Residents, withdrew those funds, and provided them to Pelcowitz in cash less a fee paid to Zuk in compensation to him for the use of the Nest Account.

II. BACKGROUND

A. Zuk

9. Zuk is a resident of Oakville, Ontario. He is the subject of an order of the Commission dated March 1, 2007. Zuk was registered with the Commission in the category of salesperson from February 13, 1987 to November 15, 1990.

10. From 2006, Zuk had access and control over a business banking account at a Royal Bank of Canada branch in Oakville, Ontario which was in the name of a sole proprietorship business called Nest (the “Nest Account”).

11. In or about the end of August 2008, Pelcowitz approached Zuk and requested Zuk’s assistance in obtaining access to a bank account into which funds could be deposited. Zuk agreed to provide Pelcowitz with access to the Nest Account. Pelcowitz and Zuk agreed that Zuk would advise Pelcowitz when funds were deposited into the Nest Account. They also agreed that Zuk would withdraw those funds and provide them to Pelcowitz less a fee. To facilitate the agreement, Zuk obtained and then provided to Pelcowitz the wire transfer details for the Nest Account.

12. On April 8, 2009, the Commission issued a direction pursuant to subsection 126(1) of the Act, to the Royal Bank of Canada (“RBC”) directing that they retain all funds in the Nest Account (the “Freeze Direction”).

13. The Freeze Direction was extended on consent by order of the Superior Court of Justice on April 15, 2009, May 20, 2009, June 19, 2009, and, on December 7, 2009, the Freeze Direction was extended until the completion of proceedings commenced by the Commission if not revoked or varied by the Commission or until further order of the Superior Court of Justice.

14. At the time the Freeze Direction was issued, there was \$36,390.67 in the Nest Account. As of November 23, 2012, there is \$36,176.67 in the Nest Account (the “Frozen Funds”).

15. The Frozen Funds were obtained through non-compliance with the Act.

III. THE ADVANCE-FEE SCHEMES

16. During the Material Time, the U.K. Residents received unsolicited phone calls from representatives of Nest A&M and were told that Nest A&M had buyers for securities already held by the U.K. Residents for a substantial premium to their original purchase price.

17. The U.K. Residents were then told that they would have to pay “performance bonds”, “non-resident taxes” and/or fees to remove “share restrictions” to Nest A&M before Nest A&M could complete the sale of the securities.

18. The U.K. Residents sent their “performance bond” or other advance-fee funds via wire transfer to the Nest Account. The Nest Account received \$366,234.42 from U.K. Residents solicited by Nest A&M. Certain of the U.K. Residents were repaid \$47,666.00 from funds provided by other U.K. residents to a company called IMG International Inc., which had a bank account controlled by Pelcowitz.

19. None of the transactions for which the U.K. Residents wired funds to the Nest Account have been completed as promised by Nest A&M and save for the \$47,666 referenced above, none of the funds have been repaid to the U.K. Residents.

20. After funds were deposited in the Nest Account, Zuk withdrew the funds and provided Pelcowitz the funds in cash less a fee paid to Zuk in compensation to Zuk for the use of the Nest Account.

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

21. By engaging in the conduct described above, Zuk admits and acknowledges that he contravened Ontario securities law and acted contrary to the public interest by trading in securities through participating in acts or conduct directly or indirectly in furtherance of trades by Nest A&M, contrary to subsection 25(1)(a) of the Act as enacted during the Material Time.

PART V - TERMS OF SETTLEMENT

22. Zuk agrees to the terms of settlement listed below.

23. The Commission will make an order, pursuant to section 127(1) of the Act, that:
- (a) the Settlement Agreement is approved;
 - (b) trading in any securities by Zuk cease for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)2 of the Act;
 - (c) acquisition of any securities by Zuk cease for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)2.1 of the Act;
 - (d) any exemptions contained in Ontario securities law do not apply to Zuk for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)3 of the Act;
 - (e) Zuk be reprimanded, pursuant to s.127(1)6 of the Act;
 - (f) Zuk is prohibited from becoming or acting as a director or officer of any issuer for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8 of the Act;
 - (g) Zuk is prohibited from becoming or acting as a director or officer of a registrant for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8.2 of the Act;
 - (h) Zuk is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8.4 of the Act;
 - (i) Zuk is prohibited from becoming or acting as a registrant, an investment fund manager or a promoter, as defined in s. 1(1) of the Act, for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8.5 of the Act; and
 - (j) Zuk shall disgorge to the Commission the amount of \$36,176.67 obtained as a result of his non-compliance with Ontario securities law to be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

24. Zuk undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in subparagraphs 23(b) to (i) above.

25. Zuk undertakes to provide Staff with an irrevocable direction to RBC to pay the Frozen Funds to the Commission to be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

PART VI - STAFF COMMITMENT

26. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Zuk in relation to the facts set out in Part III herein, subject to the provisions of paragraph 27 below.

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

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

28. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Zuk for the scheduling of the hearing to consider the Settlement Agreement.

29. Staff and Zuk agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Zuk's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

30. If this Settlement Agreement is approved by the Commission, Zuk agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

31. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

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

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

33. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Zuk leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Zuk; and
- (b) Staff and Zuk shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

34. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Zuk and Staff or as may be required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

35. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement

36. A facsimile copy of any signature will be as effective as an original signature.

Dated this 4th day of December 2012.

Signed in the presence of:

“Michael Zuk”

“Robert Zuk”

Signature of witness

Robert Patrick Zuk

Michael Zuk

[print name of witness]

Dated this 4th day of December 2012.

STAFF OF THE ONTARIO SECURITIES COMMISSION

“Tom Atkinson”

Tom Atkinson
Director, Enforcement Branch

Dated this 4th day of December 2012.

Schedule "A"



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- and -

**IN THE MATTER OF NEST ACQUISITIONS AND MERGERS,
IMG INTERNATIONAL INC., CAROLINE MYRIAM FRAYSSIGNES,
DAVID PELCOWITZ, MICHAEL SMITH, and
ROBERT PATRICK ZUK**

--and --

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION and
ROBERT PATRICK ZUK**

**ORDER
(Section 127(1))**

WHEREAS on January 18, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") to consider whether it is in the public interest to make orders, as specified therein, against in respect of Robert Patrick Zuk ("Zuk") and others. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated January 18, 2010;

AND WHEREAS Zuk entered into a Settlement Agreement with Staff of the Commission dated , 2012 (the "Settlement Agreement") in which Zuk agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated January 18, 2010, subject to the approval of the Commission;

WHEREAS on _____, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Zuk;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Zuk and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

- (a) the Settlement Agreement is approved;
- (b) trading in any securities by Zuk cease for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)2 of the Act;
- (c) acquisition of any securities by Zuk cease for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)2.1 of the Act;
- (d) any exemptions contained in Ontario securities law do not apply to Zuk for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)3 of the Act;
- (e) Zuk be reprimanded, pursuant to s.127(1)6 of the Act;
- (f) Zuk is prohibited from becoming or acting as a director or officer of any issuer for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8 of the Act;
- (g) Zuk is prohibited from becoming or acting as a director or officer of a registrant for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8.2 of the Act;

- (h) Zuk is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8.4 of the Act;
- (i) Zuk is prohibited from becoming or acting as a registrant, an investment fund manager or a promoter, as defined in s. 1(1) of the Act, for a period of 20 years from the date of the approval of the Settlement Agreement, pursuant to s.127(1)8.5 of the Act; and
- (j) Zuk shall disgorge to the Commission the amount of \$36,176.67 obtained as a result of his non-compliance with Ontario securities law to be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

DATED AT TORONTO this day of 2012.
