

**Order 2.15**

**Emerson, Re**

**Reference: Section 127, Section 127.1**

***In the Matter of the Securities Act R.S.O. 1990, C. S.5, As Amended and In the Matter of Robert James Emerson***  
**Citation: 25 O.S.C.B. 1125**

**Court: Ontario Securities Commission**

**Judge: Paul M. Moore, R. Stephen Paddon, M T McLeod**

**Date: February 19, 2002**

**Year: 2002**

*WHEREAS* on February 11, 2002 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the Securities Act, R.S.O. 1990 c.S.5, as amended (the "Act") in respect of Robert James Emerson ("Emerson");

*AND WHEREAS* Emerson entered into a settlement agreement dated February 11, 2002 (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

*AND UPON* reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from the respondent 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 ORDERED THAT:*

(1) the Settlement Agreement dated February 11th, 2002 attached to this Order is hereby approved;

(2) pursuant to clause 2 of subsection 127(1) of the Act, effective from the date of this Order, Emerson shall cease trading in securities for a period of five years, with the exception of any sale by Emerson of Emerson's Current Interest in 1279514 Ontario Inc., as more particularly described in the Settlement Agreement;

(3) pursuant to clause 8 of subsection 127(1) of the Act, Emerson is prohibited from becoming or acting as an officer of a reporting issuer in Ontario, a director of an issuer in Ontario, and an officer or director of any issuer which has an interest in any registrant, for a period of five years effective from the date of this Order, except that Emerson may continue in his position as sole officer and director of Erinlee Holdings Inc.

(4) pursuant to clause 6 of subsection 127(1) of the Act, Emerson is hereby reprimanded.

***IN THE MATTER OF THE SECURITIES ACT R.S.O. 1990, C. S.5, AS AMENDED AND IN THE MATTER OF ROBERT JAMES EMERSON***

**Settlement Agreement**

## **I Introduction**

1. By Notice of Hearing dated February 11, 2002 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act"), in the opinion of the Commission, it is in the public interest for the Commission:

(a) to make an order pursuant to section 127(1) clause 2 of the Act that trading in securities by Robert James Emerson ("Emerson") cease permanently or for such other period as specified by the Commission;

(b) to make an order pursuant to section 127(1) clause 7 of the Act that Emerson resign one or more positions which Emerson may hold as an officer or director of any issuer;

(c) to make an order pursuant to section 127(1) clause 8 of the Act that Emerson is prohibited from becoming or acting as a director or officer of any issuer permanently or for such other period as specified by the Commission;

(d) to make an order pursuant to section 127(1) clause 6 of the Act that Emerson be reprimanded;

(e) to make an order pursuant to section 127.1 of the Act that Emerson pay the costs of Staff's investigation and the costs of, or related to, this proceeding, incurred by or on behalf of the Commission;

(f) to make such other order as the Commission considers appropriate.

## **II Joint Settlement Recommendation**

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceedings initiated in respect of the respondent by the Notice of Hearing in accordance with the terms and conditions set out below. The respondent agrees to the settlement on the basis of the facts agreed to as hereinafter provided and the respondent consents to the making of an Order in the form attached as Schedule "A" on the basis of the facts set out below.

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

## **III Settlement of Facts and Conclusions**

### **Acknowledgement**

4. Staff and the respondent agree with the facts and conclusions set out in Part III of the Settlement Agreement.

### **Introduction**

5. During the period from approximately May 1995 to December 1996 (the "Material Time"), Emerson was the President of IPO Capital Corp. ("IPO Capital") and registered pursuant to the Act as the sole trading officer of IPO Capital. During the Material Time, IPO Capital was registered pursuant to the Act as a securities dealer, until August 1996, at which time it was registered as a broker pursuant to the Act. Emerson has not been registered in any capacity pursuant to the Act since October 19, 1998.

## **Trading by Emerson Contrary to the Requirements of Ontario Securities Law**

6. During the Material Time, Emerson traded in securities, where such trading was a distribution of such securities, without having filed a preliminary prospectus and a prospectus, and obtaining receipts therefor from the Director, and without an exemption to the prospectus requirement, contrary to section 53(1) of the Act.

7. Emerson engaged in conduct which constituted trading in securities contrary to the requirements of Ontario securities law by carrying out acts in furtherance of trades of securities in certain companies, as described below. In particular, during the Material Time, Emerson solicited approximately 70 individuals and companies in Ontario and elsewhere, to purchase securities in three companies, namely, Royal Laser Tech Corporation ("Royal Laser"), Champion Communication Services Inc. ("Champion"), and Luxell Technologies Inc. ("Luxell") (collectively, referred to as the "Companies"). Of the 70 investors, at least 36 investors were clients of IPO Capital. Emerson arranged for these investors to purchase securities in the Companies through a series of pooling and subscription agreements entered into between the investors and Britwirth Investment Company, Ltd. (the "Agreements"). Britwirth Investment Company, Ltd. ("Britwirth") was incorporated pursuant to the laws of Turks and Caicos Islands and was not registered in any capacity under the Act.

8. Subsequent to receiving funds from investors for the purchase of securities in the Companies, Britwirth purchased securities in the Companies. Britwirth then distributed securities in Royal Laser and Champion to the investors who had purchased securities through the Agreements. In the case of the securities of Luxell, Emerson arranged for the transfer of Luxell shares from an account in the name of Britwirth held at IPO Capital to 57 individuals, 37 of which were clients of IPO Capital.

9. During the Material Time, IPO Capital or Emerson earned fees and commissions in the amount of at least \$61,000 in relation to the investors Emerson solicited to purchase securities in the Companies as described above. Emerson was the sole shareholder of IPO Capital during the Material Time.

10. Emerson failed to deal fairly, honestly and in good faith with clients of IPO Capital, in breach of the requirements set out in Ontario securities law, and in particular subsections 2.1(1) and (2) of Rule 31-505, in that Emerson solicited certain clients of IPO Capital to purchase securities through the pooling arrangements described above when he was aware that such securities had not been distributed pursuant to a receipted prospectus.

11. Emerson owns directly, and indirectly as a shareholder of Erinlee Holdings Inc. ("Erinlee Holdings"), 12.4% or 1,701,447 shares ("Emerson's Current Interest") of 1279514 Ontario Inc. ("1279514"). IPO Capital is 100% owned by 1279514. Emerson is the sole officer and director of Erinlee Holdings, a closely held company.

## **Conduct Contrary To The Public Interest**

12. In summary, during the Material Time, Emerson violated Ontario securities law and engaged in conduct contrary to the public interest, by reason of the following:

(a) Emerson traded in securities, as outlined above, where such trading constituted a distribution of such securities, without filing and obtaining a receipt for a prospectus and without an exemption to the prospectus requirement, contrary to section 53(1) of the Act; and

(b) Emerson failed to deal fairly, honestly and in good faith with clients of IPO Capital, in breach of the requirements set out in Ontario securities law, and in particular subsections

2.1(1) and (2) of Rule 31-505, in that Emerson solicited certain clients of IPO Capital to purchase securities through the pooling arrangements described above when he was aware that such securities had not been distributed pursuant to a receipted prospectus.

#### **IV Terms of Settlement**

13. The respondent agrees to the following terms of settlement:

(a) pursuant to clause 8 of subsection 127(1) of the Act, Emerson is prohibited from becoming or acting as an officer of a reporting issuer in Ontario, a director of an issuer in Ontario and an officer or director of a registrant or of any issuer which has an interest directly or indirectly in any registrant, for a period of five years effective from the date of the Order of the Commission approving the proposed Settlement Agreement herein, except that Emerson may continue in his position as sole officer and director of Erinlee Holdings;

(b) Emerson will not own directly or indirectly any interest in a registrant for a period of five years effective from the date of the Commission's Order approving this Settlement Agreement, with the exception of Emerson's Current Interest in 1279514. Emerson undertakes to take necessary and reasonable steps to sell Emerson's Current Interest in 1279514. During the time in which Emerson owns any interest in 1279514, either directly or indirectly, for the five year period effective from the date of the Order of the Commission approving this Settlement Agreement, Emerson agrees not to exercise voting rights, control or otherwise influence or attempt to influence management of 1279514 or the affairs of 1279514, except in relation to the aforesaid sale of Emerson's Current Interest in 1279514. Emerson further agrees not to purchase directly or indirectly any additional shares of 1279514 for a period of five years from the date of the Order of the Commission approving this Settlement Agreement;

(c) Pursuant to clause 2 of subsection 127(1) of the Act, Emerson is prohibited from trading in securities for a period of five years effective from the date of the Order of the Commission approving this Settlement Agreement, with the exception of any sale by Emerson of Emerson's Current Interest in 1279514 as outlined in paragraph 13(b) above; and

(d) Emerson will be reprimanded and he will attend the hearing in person to be reprimanded by the Commission under clause 6 of subsection 127(1) of the Act.

#### **V Staff Commitment**

14. If this Settlement Agreement is approved by the Commission, Staff will not initiate any complaint to the Commission or request the Commission to hold a hearing or issue any order in respect of any conduct or alleged conduct of the respondent in relation to the facts set out in Part III of this Settlement Agreement.

#### **VI Procedure for Approval of Settlement**

15. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for February, 2002, or such other date as may be agreed to by Staff and the respondent (the "Settlement Hearing").

16. Counsel for Staff or the respondent Emerson may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Emerson agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

17. If this settlement is approved by the Commission, Emerson agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

18. Staff and Emerson agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

19. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission;

(a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Emerson leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Emerson;

(b) Staff and Emerson shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Settlement Agreement or the settlement discussions/negotiations;

(c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person except with the written consent of Staff and Emerson, or as may be required by law; and

(d) Emerson agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement 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.

#### **VII. Disclosure of Agreement**

20. Except as permitted under paragraph 19 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Emerson until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission, except with the written consent of Staff and Emerson, or as may be required by law.

21. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

#### **VIII. Execution of Settlement Agreement**

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

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

February 11, 2002.

Robert James Emerson

Signed in the presence of:

Staff of the Ontario Securities Commission

Per:

Michael Watson

Director, Enforcement Branch