

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

Hearing: August 27, 2002

Panel: Paul M. Moore, Q.C. - Vice-Chair (Panel Chair)  
Robert L. Shirriff, Q.C. - Commissioner

Appearances: Johanna Superina - For the Staff of the Ontario  
Stephanie Collins Securities Commission

Linda Fuerst - For J.F. Pincock

**EXCERPT FROM THE SETTLEMENT HEARING**  
**CONTAINING THE ORAL REASONS FOR DECISION**

The following statement has been prepared for purposes of publication in the Ontario Securities Commission Bulletin and is based on the transcript of the hearing, including oral reasons delivered at the hearing, in the matter of James Frederick Pincock. The transcript has been edited, supplemented and approved by the panel for the purpose of providing a public record of the panel's decision in the matter. This decision should be read together with the settlement agreement and the order attached.

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**Vice-Chair Moore:**

We approve the settlement agreement as being in the public interest.

**Facts**

[1] The facts in support of the proposed sanctions are set out in the settlement agreement, dated August 23, 2002.

[2] Briefly, the facts are that from May 1995 to May 1999 (the material time), Pincock was the President of Britwirth Investment Company Limited and an officer or director of Fulton Park Limited and Wifsta Limited. Pincock and his then spouse were the sole shareholders of Britwirth. At the material time, Pincock, Britwirth, Fulton Park, and Wifsta were not registered in any capacity under the Securities Act.

[3] During the material time, Pincock traded in securities where such trading was a distribution of securities without having filed a preliminary prospectus and a prospectus, and obtaining receipts therefor from the director as required by section 53(1) of the Act. Further, Pincock traded in securities without registration contrary to section 25(1) of the Act.

[4] In particular, Pincock received funds in the amount of at least CDN \$1.45 million and at least US \$550,000 from at least 150 investors in Ontario and elsewhere to purchase securities in at least seven companies. The funds Pincock received from investors were deposited into accounts in the name of Britwirth, Fulton Park or Wifsta. These accounts were held at several brokerage firms in Ontario. Pincock arranged for the investors to purchase securities in the companies through pooling and subscription agreements entered into between the investors and Britwirth, Fulton Park or Wifsta.

[5] After receiving funds from investors for the purchase of securities in the companies, Britwirth, Fulton Park and Wifsta, under Pincock's direction, purchased securities in the companies. Britwirth, Fulton Park and Wifsta then distributed securities in the companies to the investors who had purchased securities through the agreements.

[6] In relation to the sale of the securities of one of the companies, Britwirth earned commissions in the amount of CDN \$139,200; in relation to the sale of securities of another company, Britwirth earned fees in the amount of US \$81,000.

[7] Further, during the material time, Pincock, on his own behalf or in his capacity as president of Britwirth, acted as an adviser to the investors or as portfolio manager for the purpose of managing investments on behalf of clients. As I stated previously, he and Britwirth were not registered in any capacity under the Act.

[8] There is no allegation or evidence that investors suffered any harm or damage directly as a result of this conduct.

[9] Pincock admits that he breached the prospectus and registration requirements of Ontario securities law and that such conduct was contrary to the public interest.

[10] We have determined that it is in the public interest for the Commission to approve the settlement agreement and to make the proposed order for the reasons that I will now give.

### **Reasons**

[11] The settlement reflects a disposition that is commensurate with the seriousness of Pincock's misconduct and is fair and proportional in the circumstances.

[12] In particular, we are satisfied that the sanctions are appropriate for the following reasons.

[13] First, Pincock has recognized his misconduct and has agreed to sanctions as set out in Part IV of the proposed settlement. These sanctions prohibit him from participation in Ontario's capital markets. They include an undertaking not to apply for registration for five years, a prohibition from acting as an officer or director of a registrant or issuer for five years, and a cease trade for a period of five years with the exception that after three years Pincock may trade in securities beneficially owned by him in his personal accounts in his name.

[14] Second, Pincock has no prior disciplinary history with the Commission.

[15] Third, by entering into a settlement agreement, staff and Pincock have avoided the necessity of conducting a more lengthy and expensive proceeding.

### **Reprimand**

[16] Mr. Pincock, you are hereby reprimanded.

**Conclusion**

[17] We would like to thank both counsel for their presentation. The list of precedent settlement agreements and the table showing the various sanctions was particularly helpful. We are satisfied that this case has been properly disposed of.

August 27, 2002.

"Paul M. Moore"

"Robert L. Shirriff"