



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF MI CAPITAL CORPORATION
and ONE CAPITAL CORP. LIMITED**

**REASONS AND DECISION ON SANCTIONS
(Subsections 127(1) and 127(10) of the Act)**

Decision: March 27, 2013

Panel: James E. A. Turner - Vice-Chair

Counsel: Sylvia Schumacher - For Staff of the Commission

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REASONS FOR DECISION ON SANCTIONS

I. OVERVIEW

[1] This was a hearing (the “**Hearing**”) conducted in writing before the Ontario Securities Commission (the “**Commission**”) pursuant to subsections 127(1) and 127(10) 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 an order imposing sanctions against MI Capital Corporation (“**MI Capital**”) and One Capital Corp. Limited (“**One Capital**”) (collectively, the “**Respondents**”).

[2] A Notice of Hearing in this matter was issued by the Commission on February 13, 2013 and a Statement of Allegations was filed by Staff of the Commission (“**Staff**”) on February 12, 2013.

[3] On February 28, 2013, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondents did not appear at the application hearing.

[4] The Commission granted Staff’s application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff provided written submissions, a hearing brief and a brief of authorities. The Respondents did not appear and did not file any responding materials.

Facts

[6] On June 11, 2012, a panel of the New Brunswick Securities Commission (the “**NBSC**”) conducted a hearing. Despite being properly served, no one appeared on behalf of either of the Respondents, and neither of the Respondents filed a response to NBSC Staff’s allegations.

[7] The Respondents are subject to an order made by the NBSC dated June 11, 2012 (the “**NBSC Order**”) that imposes sanctions, conditions, restrictions or requirements upon them.

[8] In its Reasons for Decision on the Merits dated August 8, 2012 (the “**Reasons**”), a panel of the NBSC found that the Respondents engaged in unregistered trading contrary to subsection 45(a) of the *Securities Act*, S.N.B. 2004, c. S-5.5 (the “**NB Act**”), and acted contrary to the public interest.

[9] Staff are seeking an inter-jurisdictional enforcement order pursuant to paragraph 4 of subsection 127(10) of the Act, reciprocating the NBSC Order.

[10] In its Reasons, the NBSC found that MI Capital has its head office in Hong Kong and One Capital has its head office in Singapore.

[11] The conduct for which the Respondents were sanctioned took place in and around April 2012 through May 2012.

[12] Staff relies on subsection 127(10) of the Act, which permits the Commission to make an order under subsections 127(1) or 127(5) of the Act in respect of a person or company who is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company (subsection 127(10)4 of the Act).

[13] These are my reasons for sanctions imposed pursuant to subsections 127(1) of the Act in reliance on subsection 127(10) of the Act.

II. FINDINGS OF THE NEW BRUNSWICK SECURITIES COMMISSION

[14] In its Reasons, the panel of the NBSC made the following findings against the Respondents:

- (a) the Respondents traded in securities or exchange contracts in New Brunswick;
- (b) no exemptions were available to the Respondents which would allow them to trade without being registered;
- (c) neither of the Respondents was registered with the NBSC to trade; and
- (d) these are appropriate circumstances for the NBSC to exercise its public interest jurisdiction, pursuant to section 184 of the NB Act.

The NBSC Order

[15] The NBSC Order imposed the following sanctions, conditions, restrictions or requirements pursuant to paragraphs 184(1)(c) and 184(1)(d) of the NB Act:

- (a) that the Respondents permanently cease trading in all securities; and
- (b) that any exemptions contained in New Brunswick securities law do not apply to the Respondents permanently.

III. ANALYSIS

A. SUBSECTION 127(10) OF THE ACT

[16] Subsection 127(10) of the Act provides in part as follows:

127 (10) Inter-jurisdictional enforcement – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

...

- 4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory

authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.

...

[17] The NBSC Order makes the Respondents subject to an order of the NBSC that imposes sanctions, conditions, restrictions or requirements on them, within the meaning of paragraph 4 of subsection 127(10).

[18] Based on the NBSC Order, the Commission may make one or more orders under subsections 127(1) of the Act, if in its opinion it is in the public interest to do so.

[19] In *Re Euston Capital Corp.* (2009), 32 OSCB 6313 (“*Euston Capital*”), the Commission concluded that subsection 127(10) of the Act can be the grounds for an order in the public interest under subsection 127(1) of the Act, based on a decision and order made in another jurisdiction:

... we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario’s capital markets.

(*Euston Capital, supra*, at para. 26)

[20] I therefore find that I have the authority to make a public interest order under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act, based on the findings of the NBSC and the NBSC Order.

B. SUBMISSIONS OF THE PARTIES

Staff’s Submissions

[21] To adequately protect Ontario capital markets, Staff seek to impose sanctions that are consistent with the sanctions imposed by the NBSC pursuant to the NBSC Order.

[22] Staff requests the following sanctions against the Respondents:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by or of the Respondents cease permanently; and
- (b) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to the Respondents permanently.

[23] Staff submits that I am entitled to impose the sanctions requested by Staff based solely on the evidence before me, which consists of the Reasons and the NBSC Order.

Respondents’ Submissions

[24] The Respondents did not appear and did not make any submissions.

C. FINDINGS

[25] In imposing sanctions, I rely on the NBSC Order. In my view, it is not appropriate in exercising my jurisdiction to revisit or second-guess the NBSC's findings of fact or legal conclusions.

D. SHOULD AN ORDER FOR SANCTIONS BE IMPOSED?

[26] When exercising the public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

- (a) to protect investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in capital markets.

[27] In pursuing these purposes, I must have regard for the fundamental principles described in subsection 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act is restrictions on fraudulent and unfair market practices and procedures.

[28] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that when considering imposing sanctions, it should be remembered that "participation in the capital markets is a privilege and not a right" (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[29] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

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

[30] I find that it is necessary to protect Ontario investors and the integrity of Ontario's capital markets to make a sanctions order against the Respondents in the public interest.

E. THE APPROPRIATE SANCTIONS

[31] In determining the nature and duration of the appropriate sanctions, I must consider all of the relevant facts and circumstances before me, including:

- (a) the seriousness of the conduct and the breaches of the NB Act;

- (b) the harm to investors;
- (c) the level of a respondent's activity in the marketplace;
- (d) whether or not the sanctions imposed may serve to deter not only the Respondents but any like-minded people from engaging in similar abuses of the Ontario capital markets;
- (e) the effect any sanctions may have on the ability of the Respondents to participate without check in the capital markets;
- (f) any mitigating factors.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 (“*Belteco*”) at paras. 25 and 26.)

[32] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against the Respondents:

- (a) the Respondents were found by a panel of the NBSC to have breached New Brunswick securities law;
- (b) the terms of the NBSC Order; and
- (c) the conduct for which the Respondents were sanctioned in the NBSC Order would constitute contraventions of Ontario securities law if they had occurred in Ontario, including a contravention of subsections 25(1) of the Act.

[33] In my view, there are no mitigating factors or circumstances.

[34] I have reviewed the Commission and other decisions on sanctions referred to me by Staff in assessing the sanctions appropriate in this case. In reviewing those decisions, I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco, supra*, at para. 26).

[35] In *British Columbia (Securities Commission) v. McLean* (2011) BCCA 455 (“*McLean*”), the British Columbia Court of Appeal held that when reciprocating an order originally made in Ontario, the BCSC has a duty to provide reasons, however brief, for the sanctions it is imposing and why they are in the public interest. “[M]erely reciprocally enforcing] the Ontario order ... would not be consistent with its mandate under s. 161 [section 127 of the Act], and ... might amount to a fettering of discretion” (*McLean, supra*, at paras. 28-29).

[36] In *Lines v. British Columbia (Securities Commission)*, (2012) BCCA 316 (“*Lines*”), the British Columbia Court of Appeal interpreted *McLean, supra*, as holding that the Commission “must make its own determination of the public interest under s. 161 [section 127 of the Act], rather than make an order automatically based on the order of the foreign jurisdiction” (*Lines, supra*, at para. 31).

[37] Staff submits that the NBSC Order imposed significant sanctions on the Respondents. Staff submits that the Commission should exercise its discretion to impose sanctions consistent with those imposed by the NBSC pursuant to the NBSC Order.

[38] Staff submits that the sanctions imposed in the NBSC Order are appropriate to the misconduct by the Respondents, and serve as both specific and general deterrence. Staff further submits that a protective order imposing market conduct restrictions on the Respondents substantially similar to those imposed by the NBSC Order are required to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondents.

[39] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following sanctions on the Respondents:

- (a) trading in any securities by the Respondents shall cease permanently; and
- (b) any exemptions contained in Ontario securities law do not apply to the Respondents permanently.

IV. CONCLUSION

[40] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule "A" hereto.

DATED at Toronto this 27th day of March, 2013.

"James E. A. Turner"

James E. A. Turner

Schedule "A"



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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 MI CAPITAL CORPORATION and ONE CAPITAL CORP. LIMITED

ORDER (Subsections 127(1) and 127(10))

WHEREAS on February 13, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of MI Capital Corporation ("MI Capital") and One Capital Corp. Limited ("One Capital") (collectively, the "Respondents");

AND WHEREAS on February 12, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on February 28, 2013, the Commission heard an application by Staff to convert the matter to a written hearing, in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS the Commission granted Staff's application to proceed by written hearing and set down a schedule for the submission of materials by the parties;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS the Respondents did not appear and did not file any materials;

AND WHEREAS the Respondents are subject to an order dated June 11, 2012 made by the New Brunswick Securities Commission, that imposes sanctions, conditions, restrictions or requirements upon them within the meaning of paragraph 4 of subsection 127(10) of the Act;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act, in reliance upon subsection 127(10) of the Act:

IT IS HEREBY ORDERED THAT:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by the Respondents shall cease permanently; and
- (b) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to the Respondents permanently.

DATED at Toronto this 27th day of March, 2013.

“James E. A. Turner”

James E. A. Turner