



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 STEVEN VINCENT WEERES and
REBEKAH DONSZELMANN**

**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 Steven Vincent Weeres (“**Weeres**”) and Rebekah Donszelmann (“**Donszelmann**”) (collectively, the “**Respondents**”).

[2] A Notice of Hearing in this matter was issued by the Commission on February 6, 2013 and a Statement of Allegations was filed by Staff of the Commission (“**Staff**”) on January 31, 2013.

[3] On February 19, 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 from 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] The Respondents are residents of Millet, Alberta.

[7] The Respondents were involved in the operations of Shaker Management Group Inc. (“**SMGI**”), a New Brunswick corporation incorporated in 2008.

[8] Neither Weeres nor Donszelmann has ever been registered with the New Brunswick Securities Commission (“**NBSC**”) in any capacity.

[9] On September 8, 2011, a panel of the NBSC conducted a hearing by conference call. The Respondents disputed the allegations, filed written submissions prior to the hearing, and participated in the hearing.

[10] On March 15, 2012, the NBSC issued an order (the “**NBSC Order**”) imposing sanctions, conditions, restrictions or requirements upon the Respondents.

[11] The conduct for which the Respondents were sanctioned occurred between November 2008 and September 2009.

[12] SMGI discontinued operations in the Fall of 2009 and is currently insolvent.

[13] 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).

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

II. FINDINGS OF THE NEW BRUNSWICK SECURITIES COMMISSION

[15] In its reasons for decision on the merits (the “**Merits Decision**”) dated November 29, 2011, the panel of the NBSC made the following findings against the Respondents:

- (a) the Respondents traded in securities in New Brunswick without being registered to do so and without any exemption from the registration requirements, contrary to section 45(a) of the *Securities Act*, S.N.B. 2004, c. S-5.5 (the “**NB Act**”);
- (b) the Respondents did not file a prospectus with the NBSC in relation to the distribution of SMGI securities, nor were they exempted from doing so, in contravention of section 71 (1) of the NB Act;
- (c) Weeres made representations relating to the future value of securities in an effort to effect a trade, contrary to section 58(2) of the NB Act;
- (d) Weeres perpetrated a fraud, in contravention of section 69(b) of the NB Act; and
- (e) Weeres made misleading and untrue statements in a material respect, in contravention of section 181 of the NB Act.

The NBSC Order

[16] The NBSC Order imposed the following sanctions, conditions, restrictions or requirements:

- (a) upon Weeres:
 - (i) pursuant to sections 184(1)(c),(d) and (i) of the NB Act, that Weeres cease trading in securities in New Brunswick permanently, that any exemptions from New Brunswick securities laws do not apply to him permanently and that he be prohibited from becoming or acting as a director or officer of any issuer permanently; and
 - (ii) pursuant to subsection 186(1) of the NB Act, that Weeres pay an administrative penalty in the amount of \$200,000.00;

(b) upon Donszelmann:

(i) pursuant to sections 184(l)(c),(d) and (i) of the NB Act, Donszelmann cease trading in securities in New Brunswick for a period of 20 years, that any exemptions from New Brunswick securities laws not apply to her for a period of 20 years and that she be prohibited from becoming or acting as a director or officer of any issuer for a period of 20 years; and

(ii) pursuant to subsection 186(1) of the NB Act, that Donszelmann pay an administrative penalty in the amount of \$25,000.00;

(c) upon the Respondents:

(i) pursuant to paragraph 184(l)(p) of the NB Act, that the Respondents disgorge \$22,600.00 to the NBSC; and

(ii) pursuant to paragraph 185 of the NB Act, that the Respondents jointly and severally pay costs in the amount of \$ 13,575.00.

III. ANALYSIS

A. SUBSECTION 127(10) OF THE ACT

[17] 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.

...

[18] 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) of the Act.

[19] 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.

[20] In *Re Euston Capital Corp.* (2009), 32 OSCB 6313 (“*Euston Capital*”), the Commission concluded that subsection 127(10) 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)

[21] 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

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

[23] Staff requests the following sanctions against Weeres:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by Weeres cease permanently;
- (b) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Weeres permanently;
- (c) pursuant to paragraph 7 of subsection 127(1) of the Act, that Weeres resign any positions that he holds as a director or officer of any issuer; and
- (d) pursuant to paragraph 8 of subsection 127(1) of the Act, that Weeres be prohibited from becoming or acting as a director or officer of any issuer permanently.

[24] Staff requests the following sanctions against Donszelmann:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by Donszelmann cease until March 15, 2032;
- (b) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Donszelmann until March 15, 2032;
- (c) pursuant to paragraph 7 of subsection 127(1) of the Act, that Donszelmann resign any positions that she holds as a director or officer of any issuer; and

(d) pursuant to paragraph 8 of subsection 127(1) of the Act, that Donszelmann be prohibited from becoming or acting as an officer or director of any issuer until March 15, 2032.

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

Respondents' Submissions

[26] The Respondents did not appear and did not file any submissions.

C. FINDINGS

[27] In imposing sanctions, I rely on the Merits Decision and 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?

[28] 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.

[29] 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.

[30] 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).

[31] 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.

[32] The Supreme Court of Canada has also held that the Commission may impose sanctions which have as their objective general deterrence. The Supreme Court of Canada has stated that: "...it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60).

[33] 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

[34] 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; and
- (f) any mitigating factors.

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

[35] 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) Weeres was found to have committed fraud;
- (c) the terms of the NBSC Order; and
- (d) 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 contraventions of subsections 25(1) and 53(1) of the Act.

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

[37] 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).

[38] 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 it’s mandate under s. 161 [section 127 of the Act], and ... might amount to a fettering of discretion” (*McLean, supra*, at paras. 28-29).

[39] 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).

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

[41] 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 submit 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's capital markets from similar misconduct by the Respondents.

[42] 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 Weeres shall cease permanently;
- (b) any exemptions contained in Ontario securities law do not apply to Weeres permanently;
- (c) Weeres shall resign any positions that he holds as a director or officer of any issuer;
- (d) Weeres shall be prohibited permanently from becoming or acting as a director or officer of any issuer;
- (e) trading in any securities by Donszelmann shall cease until March 15, 2032,

- (f) any exemptions contained in Ontario securities laws shall not apply to Donszelmann until March 15, 2032;
- (g) Donszelmann shall resign any positions that she holds as a director or officer of any issuer; and
- (h) Donszelmann is prohibited from becoming or acting as a director or officer of any issuer until March 15, 2032.

IV. CONCLUSION

[43] 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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-AND -

**IN THE MATTER OF STEVEN VINCENT WEERES and
REBEKAH DONSZELMANN**

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

WHEREAS on February 6, 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 Steven Vincent Weeres ("Weeres") and Rebekah Donszelmann ("Donszelmann") (collectively, the "Respondents");

AND WHEREAS on January 31, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on February 19, 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 provided 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 March 15, 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 Weeres cease permanently;
- (b) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Weeres permanently;
- (c) pursuant to paragraph 7 of subsection 127(1) of the Act, that Weeres resign any positions that he holds as a director or officer of any issuer;
- (d) pursuant to paragraph 8 of subsection 127(1) of the Act, that Weeres be prohibited from becoming or acting as a director or officer of any issuer permanently;
- (e) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Donszelmann cease until March 15, 2032;
- (f) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Donszelmann until March 15, 2032;
- (g) pursuant to paragraph 7 of subsection 127(1) of the Act, Donszelmann resign any positions that she holds as a director or officer of any issuer; and
- (h) pursuant to paragraph 8 of subsection 127(1) of the Act, Donszelmann be prohibited from becoming or acting as an officer or director of any issuer until March 15, 2032.

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

“James E. A. Turner”

James E. A. Turner