



Ontario
Securities
Commission

Commission des
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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
ANDREA LEE MCCARTHY, BFM INDUSTRIES INC., and
LIQUID GOLD INTERNATIONAL CORP.
(aka LIQUID GOLD INTERNATIONAL INC.)**

**REASONS AND DECISION
(Section 127 of the *Securities Act*)**

Hearing: October 28, 2013
December 10, 2013

Decision: January 3, 2014

Panel: James D. Carnwath, Q.C. - Commissioner and Chair of the Panel

Appearances: Jonathon Feasby - For Staff of the Commission
Cameron Watson

Naomi Lutes - For Andrea Lee McCarthy

- No one appeared for BFM Industries Inc. or
Liquid Gold International Corp. (aka Liquid
Gold International Inc.)

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REASONS AND DECISION

I. OVERVIEW

A. Introduction

[1] This was a hearing before the Ontario Securities Commission (the “**Commission**”) pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”), to consider whether Andrea Lee McCarthy (“**McCarthy**”), BFM Industries Inc. (“**BFM**”) or Liquid Gold Corp. (aka Liquid Gold International Inc.) (“**Liquid Gold**”) (collectively, the “**Respondents**”) breached the Act and acted contrary to the public interest.

[2] The original proceeding was commenced by a Notice of Hearing that was issued by the Commission, pursuant to sections 127 and 127.1 of the Act, in connection with a Statement of Allegations filed by Staff of the Commission (“**Staff**”) on the same day against Sandy Winick (“**Winick**”), McCarthy, Kolt Curry, Laura Mateyak (“**Mateyak**”), Gregory J. Curry (“**Greg Curry**”), American Heritage Stock Transfer Inc. (“**AHST Ontario**”), American Heritage Stock Transfer, Inc. (“**AHST Nevada**”), BFM, Liquid Gold and Nanotech Industries Inc. (“**Nanotech**”). An Amended Notice of Hearing was issued by the Commission and an Amended Statement of Allegations was filed by Staff against the same parties on November 2, 2012. On March 23, 2012, the Commission set down the dates for the hearing on the merits to commence on November 12, 2012.

[3] This proceeding also involves a temporary cease trade order (the “**Temporary Order**”) against AHST Ontario, AHST Nevada, BFM, Denver Gardner Inc. (“**Denver Gardner**”), Winick, McCarthy, Kolt Curry and Mateyak that was first issued on April 1, 2011 and was extended from time to time. On March 23, 2012, the Commission ordered that the Temporary Order, as amended, be extended until the conclusion of the hearing on the merits, and Denver Gardner was removed as a respondent in this matter. The Temporary Order was subsequently amended on October 29, 2012, to allow McCarthy to sell securities in her Registered Retirement Savings Plan, as defined in the *Income Tax Act*, R.S.C. 1985, c. 1, as amended.

[4] On October 17, 2012, following a request from Staff, the hearing on the merits was converted to a written hearing (the “**Written Hearing**”), pursuant to Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the “**Rules of Procedure**”). Staff subsequently filed evidentiary briefs in the form of affidavits, as well as written submissions on relevant facts and law.

[5] On January 11, 2013, Staff filed a motion, pursuant to Rule 3 of the *Rules of Procedure*, seeking to sever the proceeding against the Respondents. On January 21, 2013, on consent of Staff and counsel for the Respondents, the Commission granted the application to sever the matter as against the Respondents.

[6] The hearing on the merits with respect to the Respondents was held on October 28 and December 10, 2013 (the “**Merits Hearing**”). Staff and counsel for McCarthy attended and made submissions. Staff filed written submissions, which included the Affidavit of Andrea Lee McCarthy, sworn October 23, 2013 (the “**McCarthy Affidavit**”), and the “Joint Submission re:

Liability of Andrea Lee McCarthy, BFM Industries Inc. and Liquid Gold International Corp. (aka Liquid Gold International Inc.)” (the “**Joint Submission**”). I accept that the contents in the McCarthy Affidavit to be accurate and true. I also accept that the Joint Submission was entered into and agreed to by Staff and McCarthy.

[7] In a letter dated November 13, 2013 (the “**November 2013 Letter**”), the Secretary to the Commission, on my instructions, requested further submissions from the parties on three issues: (i) notice of the Merits Hearing on BFM and Liquid Gold; (ii) the positions of BFM and Liquid Gold regarding the Joint Submission; and (iii) the directing mind of BFM and Liquid Gold. On November 20, 2013, Staff filed its response in a letter, which reflected the joint position of Staff and counsel for McCarthy. Following the appearance on December 10, 2013, the Secretary to the Commission, once again on my instructions, requested the parties to provide further submissions on the third issue discussed in the November 2013 Letter, along with submissions to support Staff’s allegation that the *mens rea* of fraud is established for BFM and Liquid Gold. Staff provided its submissions to this request on December 20, 2013.

[8] BFM and Liquid Gold did not participate in the Merits Hearing or make submissions. Staff filed the Affidavit of Service of Peaches A. Barnaby, sworn on November 30, 2012, as evidence that the Amended Notice of Hearing, the Amended Statement of Allegations and the Commission’s order of October 17, 2012, converting the matter into a written hearing, was served on the Respondents. I am satisfied that I may proceed in the absence of BFM and Liquid Gold, in accordance with section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, and Rule 7.1 of the Commission’s *Rules of Procedure*.

[9] The following reasons and decision include my findings regarding McCarthy, BFM and Liquid Gold. I will not be making any findings regarding the other respondents named in the Amended Notice of Hearing or in the Amended Statement of Allegations, being Kolt Curry, Mateyak, AHST Ontario and AHST Nevada, Winick, Greg Curry and Nanotech.

[10] On May 16, 2013, the Commission severed Kolt Curry, Mateyak, AHST Ontario and AHST Nevada (the “**Curry Respondents**”) from the original proceeding. On December 20, 2013, the Commission issued the reasons and decision on sanctions and costs with respect to the Curry Respondents (*Re Kolt Curry et al.* (2013), not yet published). On August 7, 2013, the Commission issued the reasons and decision with respect to the hearing on the merits of Winick and Greg Curry (*Re Winick* (2013), 36 O.S.C.B. 8202). On December 30, 2013, the Commission issued the reasons and decision on sanctions and costs with respect to Winick and Greg Curry (*Re Winick* (2013), not yet published).

B. The Respondents

(i) McCarthy

[11] In 2003, McCarthy met Winick, who was a business associate of her then-husband. In 2004, McCarthy became romantically involved with Winick and subsequently separated from her husband in 2007. In January 2008, McCarthy left her employment with her former husband. Thereafter, Winick provided financial support for McCarthy and her daughter.

[12] Winick travelled to Thailand in September 2009 to pursue business opportunities and he asked McCarthy to store a number of boxes of documents, which she kept for him in her

residence in Stoney Creek, Ontario. McCarthy also stored several boxes of documents for Kolt Curry after he left for Thailand with his wife, Mateyak, and his family. When Winick returned to Ontario for visits or to deal with business matters, he would stay with McCarthy at her residence in Stoney Creek.

[13] McCarthy was later informed that Winick, Greg Curry and others were arrested in Thailand. On March 24, 2011, Staff executed a search warrant at McCarthy's residence in Stoney Creek, where Staff seized, amongst other items, the boxes of documents belonging to Winick and Kolt Curry. Those documents related to Denver Gardner, an investment bank that sold shares in BFM, Liquid Gold and numerous other companies.

[14] McCarthy has never been registered with the Commission in any capacity.

(ii) **BFM**

[15] At Winick's direction, on November 25, 2008, McCarthy incorporated BFM, pursuant to the laws of Ontario. McCarthy is a director and the President of BFM. Greg Curry is the only other director of the company.

[16] At Winick's direction, McCarthy registered BFM to her home address and created a website for BFM (the "**BFM Website**"). McCarthy listed herself as the administrative and technical contact for the BFM Website.

[17] Also at Winick's direction, McCarthy opened Canadian and U.S. dollar bank accounts for BFM at TD Canada Trust (the "**BFM Accounts**"). McCarthy was listed as the director and sole signatory on these accounts.

[18] The conduct in relation to BFM took place from November 2008 to December 2010. The distribution of BFM securities occurred from June 2009 to December 2010 (the "**BFM Material Time**").

(iii) **Liquid Gold**

[19] At Winick's request, on May 26, 2009, McCarthy incorporated Liquid Gold, pursuant to the laws of Ontario. McCarthy is the sole director of Liquid Gold.

[20] At Winick's direction, McCarthy opened U.S. and Canadian dollar bank accounts for Liquid Gold at the Bank of Montreal (the "**Liquid Gold Accounts**"). McCarthy and her father were the sole signatories on these accounts.

[21] The McCarthy Affidavit covers the conduct in relation to Liquid Gold, which took place from May 2009 to November 2010. The distribution of Liquid Gold securities occurred from June 2009 to November 2010 (the "**Liquid Gold Material Time**").

II. ISSUES

[22] Staff's allegations and the Joint Submission raise the following issues:

- (a) Did the Respondents trade securities, engage in or hold themselves out as engaging in the business of trading in securities without being registered to do so in

circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the Act, as that section existed prior to September 28, 2009, and contrary to subsection 25(1) of the Act, on or after September 28, 2009, and contrary to the public interest?

- (b) Did the Respondents engage in a distribution of BFM of Liquid Gold securities without a preliminary prospectus and a prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirements, contrary to subsection 53(1) of the Act and contrary to the public interest?
- (c) Did BFM and Liquid Gold, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities of BFM or Liquid Gold, respectively, that they knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to subsection 126.1(b) of the Act and contrary to the public interest?
- (d) Did McCarthy, being a director and/or officer of BFM and Liquid Gold, authorize, permit or acquiesce in the non-compliance of Ontario securities law by BFM, Liquid Gold or by the employees, agents or representatives of BFM or Liquid Gold, and is therefore deemed under section 129.2 also to have contravened Ontario securities law and acted contrary to the public interest?

III. ANALYSIS

A. Subsections 25(1)(a) and 25(1) of the Act

[23] Prior to September 28, 2009, subsection 25(1)(a) of the Act provided that no person or company shall trade in a security unless that person is registered with the Commission as a dealer, or as a salesperson, partner, or officer of a registered dealer:

25.(1) Registration for trading – No person or company shall,

- (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

[...]

and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[24] The current subsection 25(1) of the Act came into force on September 28, 2009. Subsection 25(1) of the Act provides that a person or company shall not engage in or hold himself, herself, or itself out as engaging in the business of trading in securities unless the person or company is registered with the Commission:

25. Registration – (1) Dealers – Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading unless the person or company,

- (a) is registered in accordance with Ontario securities law as a dealer; or
- (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

[25] Based upon McCarthy’s admissions contained in the McCarthy Affidavit, I find that the Respondents engaged in unregistered trading in circumstances where no exemptions were available to them. I rely on the following paragraphs in the McCarthy Affidavit:

- During the BFM Material Time, 28 foreign individual investors (the “**BFM Investors**”) purchased previously unissued BFM securities through telephone representatives claiming to work for Denver Gardner, a non-existent investment bank purporting to operate out of Singapore, by wiring funds directly to the BFM Accounts (the “**BFM Scheme**”) (para. 35);
- The BFM Investors wired money totaling over \$360,000 (the “**BFM Investor Funds**”) to the BFM Accounts as payment for their purchase of BFM shares (para. 38);
- BFM was never registered with the Commission in any capacity, nor filed a report of exempt distribution with the Commission (para. 6);
- At Winick’s direction, McCarthy corresponded with BFM Investors regarding their investments in BFM, including signing and sending out BFM share certificates (para. 36);
- During the Liquid Gold Material Time, Liquid Gold sold previously unissued securities to at least four foreign individual investors (the “**Liquid Gold Investors**”) through telephone representatives claiming to work for Denver Gardner (the “**Liquid Gold Scheme**”). The Liquid Gold Investors wired money directly to the Liquid Gold Accounts to pay for their shares (para. 52);
- A total of approximately USD \$2.6 million was deposited into the Liquid Gold Accounts. This amount included approximately CAD \$85,000 raised through the sale of Liquid Gold shares (the “**Liquid Gold Investor Funds**”) (para. 53);
- Liquid Gold was never registered with the Commission in any capacity, nor filed a report of exempt distribution with the Commission (para. 7);
- McCarthy was never registered with the Commission in any capacity; and
- McCarthy effected transfers and withdrawals from the bank accounts of BFM and Liquid Gold under the direction of Winick (paras. 39 and 54).

B. Subsection 53(1) of the Act

[26] Subsection 53(1) of the Act provides:

53.(1) Prospectus required – No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus has been filed and receipts have been issued for them by the Director.

[27] Based upon the following paragraphs in the McCarthy Affidavit, I find that the Respondents engaged in the illegal distribution of BFM and Liquid Gold securities, where no exemptions were available to them:

- During the BFM Material Time, BFM securities were previously unissued. No prospectus or preliminary prospectus was filed with the Commission, nor was a receipt issued for them by the Director in relation to the distribution of BFM securities. BFM has never filed a report of exempt distribution with the Commission (paras. 6 and 35); and
- During the Liquid Gold Material Time, the Liquid Gold securities were previously unissued. No prospectus or preliminary prospectus was filed with the Commission, nor was a receipt issued for them by the Director, in relation to the distribution of Liquid Gold securities. Liquid Gold has never filed a report of exempt distribution with the Commission (paras. 7 and 52).

C. Subsection 126.1(b) of the Act

[28] Section 126.1(b) of the Act reads as follows:

126.1 Fraud and market manipulation – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,

[...]

(b) perpetrates a fraud on any person or company.

[29] Subsection 126.1(b) of the Act was first considered by the Commission in *Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 (“*Re Al-Tar*”). In this decision, the Commission relied upon *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (“*Anderson*”) (leave to appeal to the Supreme Court of Canada denied [2004], S.C.C.A. No. 81 (S.C.C.)) in its discussion on fraud. The fraud provision in the British Columbia *Securities Act* is similar to the Ontario provision. In *Anderson*, the British Columbia Court of Appeal relied on *R. v. Théroux*, [1993] 2 S.C.R. 5 (“*Théroux*”), in which Justice McLachlin (as she then was) summarized the elements of fraud as follows:

...the *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

(*Théroux*, above at para. 27)

[30] Similar to *Re Al-Tar*, previous decisions issued by the Commission have substantially adopted the analysis in *Anderson* and *Théroux* when reviewing the legal test for fraud. The act of fraud is therefore established by a prohibited act and a deprivation caused by the prohibited act. Based upon the McCarthy's admissions in the McCarthy Affidavit, I find that the BFM Scheme and the Liquid Gold Scheme were deceitful, false and caused deprivation to investors. I rely upon the following paragraphs in the McCarthy Affidavit:

(i) BFM

- There were never any board of director meetings or any shareholders meetings. A minute book for BFM was not kept, nor were any bylaws for the company passed. BFM never had any employees (para. 26);
- The BFM Website stated that BFM was a company that “produces White Label High Quality all-natural fresh fish organic liquid fertilizer. BFM Industries manufactures this high quality product to the exact specifications and requirements of our customers.” However, BFM never operated any fertilizer manufacturing business or any other business (paras. 28 and 32);
- In an email sent to a BFM Investor, dated August 26, 2009 and drafted by Winick, McCarthy stated that BFM hired Denver Gardner out of Singapore to raise capital and that BFM was “in the process of listing our company on the Frankfurt exchange.” In an email dated January 11, 2010, McCarthy advised the same investor, “you will see your shares listed this year.” (para. 37);
- The BFM Investor Funds totalled over \$360,000 (para. 38);
- As part of McCarthy's role with BFM, she made withdrawals and transfers from the BFM Accounts, under the direction of Winick. The majority of the withdrawals from the BFM Accounts were in cash, transfers to a joint account held by Winick and McCarthy and disbursements in the form of credit card payments for McCarthy, Winick and Winick's spouse. Funds were also transferred to the accounts of Mateyak and Kolt Curry (para. 39);

- The BFM Investor Funds were entirely depleted by these withdrawals and transfers. None of the BFM Investor Funds were disbursed for any legitimate business purpose related to BFM (paras. 40 and 41);

(ii) Liquid Gold

- There were never any board of director meetings or any shareholders meetings. A minute book for Liquid Gold was not kept, nor were any bylaws for the company passed. Liquid Gold never had any employees (para. 48);
- On its website, Liquid Gold said that it was a company specialising in the “recovery of additional hydrocarbons from domestic sources, lessening the United States’ dependence on foreign oil” (para. 50);
- As the sole director of the company, it was McCarthy’s understanding that Liquid Gold was inactive and “never operated any oil or hydrocarbon recovery business or other business and never had any assets other than cash” (para. 51);
- The Liquid Gold Investor Funds were comingled with funds derived from other sources unrelated to the stated business of Liquid Gold (para. 53);
- McCarthy effected withdrawals and transfers from the Liquid Gold Accounts as and when directed by Winick (para. 54);
- The approximately \$85,000 in Liquid Gold Investor Funds was deposited into Liquid Gold’s Canadian dollar account (the “**Liquid Gold CAD Account**”). Additional amounts totalling approximately USD \$2.5 million were deposited to the Liquid Gold Accounts and co-mingled with the Liquid Gold Investor Funds. McCarthy does not know whether the USD \$2.5 million included additional investor funds. The Liquid Gold U.S. dollar account was funded by a single transfer of approximately USD \$1,167,000 from the Liquid Gold CAD Account (para. 55); and
- Over 98% of the total of approximately USD \$2.6 million deposited to the Liquid Gold Accounts was depleted by withdrawals and transfers for purposes unrelated to the alleged business of Liquid Gold. This amount included the \$85,000 of Liquid Gold Investor Funds (para. 56).

(iii) Mens Rea of Fraud

[31] The mental element of fraud is established by subjective knowledge of the prohibited act and the subjective knowledge that the prohibited act could have as a consequence of another. Previous decisions issued by the Commission have found that for a finding of fraud against a corporate respondent, it is sufficient to show that its directing mind(s) knew or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of subsection 126.(1)(b) of the Act; see, for example, *Re Al-Tar*, above at para. 286.

[32] In determining the liability of a corporation, there is no requirement that a directing mind be a director, *de facto* or *de jure*; being a director contributes to a consideration of whether a person

is a directing mind, but “it is not determinative of the issue” (*Xanthoudakis v. Ontario Securities Commission*, 2011 ONSC 4685 at para. 63). The Commission has enumerated several factors to determine whether an individual is a *de facto* officer and director of a corporation, including:

- (a) appointing nominees as directors;
- (b) being responsible for the supervision, direction, control and operations of the company;
- (c) negotiating on behalf of the company;
- (d) substantially reorganizing and managing the company; and/or
- (e) making all significant business decisions.

(*Re IMAGIN Diagnostic Centres Inc.* (2010), 33 O.S.C.B. 7761 at para. 137, citing *Re World Stock Exchange* (2000), 9 A.S.C.S. 658 (Alta. Sec. Comm.) at 18 (Q.L.))

[33] The evidence before me establishes that Winick was the directing mind and the *de facto* officer and director of both BFM and Liquid Gold. I find that the *mens rea* of fraud is established by Winick’s subjective knowledge of the prohibited and deceitful acts of BFM and Liquid Gold, and that such acts would cause financial deprivation to investors. I rely on the admissions found in the following paragraphs in the McCarthy Affidavit to make these findings:

- Winick drafted responses to BFM Investor emails that were ultimately sent by McCarthy to these investors (para. 36);
- On August 26, 2009, McCarthy sent an email to a BFM Investor that was drafted by Winick and contained false statements about the company and its securities (para. 37);
- Winick’s role with respect to BFM was to operate the company, liaise with government officials and agencies, make business decisions and raise funds for the project (para. 31);
- At Winick’s direction, McCarthy incorporated BFM and Liquid Gold and opened the bank accounts of these corporate respondents (paras. 25, 29, 47 and 49);
- At Winick’s direction, McCarthy created the BFM Website (para. 27); and
- At Winick’s direction, McCarthy effected transfers and withdrawals from the bank accounts of BFM and Liquid Gold (paras. 39 and 54).

[34] The evidence also reveals that transfers were made from the BFM Accounts and the Liquid Gold Accounts to pay for the expenses of Winick, including credit card payments and the expenses of other companies that he controlled.

[35] I therefore find that BFM and Liquid Gold breached subsection 126.1(b) of the Act and acted contrary to the public interest.

D. Section 129.2 of the Act

[36] Lastly, I find that McCarthy, as a director and officer of BFM and Liquid Gold, is deemed to have contravened Ontario securities law, pursuant to section 129.2 of the Act, and acted contrary to the public interest.

[37] As previously mentioned, McCarthy incorporated and registered BFM and Liquid Gold. She opened the BFM Accounts, in which she was the sole signatory, and the Liquid Gold Accounts, in which she was the co-signatory with her father. McCarthy also made withdrawals and transfers from the BFM Accounts and Liquid Gold Accounts. In terms of BFM, she created the BFM website and she engaged in communications with BFM Investors.

IV. CONCLUSION

[38] For the reasons set out above, I find that:

- (a) During the BFM Material Time, McCarthy and BFM traded securities, engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the Act, as that section existed prior to September 28, 2009, and contrary to subsection 25(1) of the Act, on or after September 28, 2009, and contrary to the public interest;
- (b) During the Liquid Gold Material Time, McCarthy and Liquid Gold traded securities, engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the Act, as that section existed prior to September 28, 2009, and contrary to subsection 25(1) of the Act, on or after September 28, 2009, and contrary to the public interest;
- (c) During the BFM Material Time, McCarthy and BFM engaged in a distribution of BFM securities without a preliminary prospectus and a prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirements, contrary to subsection 53(1) of the Act and contrary to the public interest;
- (d) During the Liquid Gold Material Time, McCarthy and Liquid Gold engaged in a distribution of Liquid Gold securities without a preliminary prospectus and a prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirements, contrary to subsection 53(1) of the Act and contrary to the public interest;
- (e) During the BFM Material Time, BFM, directly or indirectly, engaged or participated in acts, practices or courses of conduct relating to securities of BFM that it knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to subsection 126.1(b) of the Act and contrary to the public interest;

- (f) During the Liquid Gold Material Time, Liquid Gold, directly or indirectly, engaged or participated in acts, practices or courses of conduct relating to securities of Liquid Gold that it knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to subsection 126.1(b) of the Act and contrary to the public interest; and
- (g) McCarthy, being a director and/or officer of BFM and Liquid Gold, authorized, permitted or acquiesced in the non-compliance of Ontario securities law of BFM and Liquid Gold, and is therefore deemed under section 129.2 to have contravened Ontario securities law and acted contrary to the public interest.

[39] I will issue an order dated January 3, 2014, which will set down the date for written submissions and the hearing with respect to sanctions and costs in this matter. The order will also extend the Temporary Order, dated March 23, 2012, as against the Respondents, until the conclusion of this proceeding.

DATED at Toronto this 3rd day of January, 2014.

“James D. Carnwath”

James D. Carnwath, Q.C.