



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- AND -

IN THE MATTER OF ABEL DA SILVA

**AMENDED STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

I. THE RESPONDENT

1. Abel Da Silva (“Da Silva”) is an individual who resides in the City of Toronto.

II. BACKGROUND TO ALLEGATIONS

• **2004 Allegations and 2006 Sanctions Against Da Silva**

2. Da Silva was a Respondent, along with three other individuals, before the Ontario Securities Commission (the “Commission”) as a result of a statement of allegations filed by Staff on November 4, 2004 (the “2004 Allegations”). In the 2004 Allegations, Staff alleged that Da Silva and the other Respondents violated Ontario securities law and acted contrary to the public interest.

3. On January 13, 2005, a pre-hearing conference was held with respect to the 2004 Allegations (the “Conference”). Counsel for Da Silva attended the Conference. As a result of the Conference, the Commission ordered that the hearing on the merits would be held May 24, 2005 through to May 27, 2005 (the “Merits Hearing”).

4. The Merits Hearing was heard by the Commission on May 24, 25, 26, and 27, 2005. Da Silva failed to appear at the hearing on the merits and was not represented by counsel.

5. On October 12, 2005, the Commission released its Decision and Reasons with respect to the Merits Hearing (the “Merits Decision”).

6. In the Merits Decision, the Commission concluded that Da Silva had been served with the notice of the Merits Hearing and the 2004 Allegations and had chosen not to appear.

7. In the Merits Decision, the Commission also found that Da Silva had violated sections 25(1) and 53 of the *Act* and had engaged in conduct contrary to the public interest. As a result of the Merits Decision, the Commission ordered a hearing relevant to the matter of sanctions.

8. On January 9, 2006, Da Silva attended before the Commission on the hearing with respect to the question of sanctions as a result of the Merits Decision (the “Sanctions Hearing”). Da Silva was not represented by counsel at the Sanctions Hearing.

9. During the Sanctions Hearing on January 9, 2006, Da Silva made the following misleading statements to the Commission:

- a. That he had not worked for a year-and-a-half;
- b. That he had been very ill and that he may never be able to work again;
- c. That he can’t do anything;
- d. That he couldn’t write a cheque for \$7,500.00 (for costs);
- e. That he couldn’t “even find a job now” and he couldn’t “even find a labour job now.”; and,

- f. That if the Commission ordered him to pay costs in the amount of \$7,500.00 he would have to go on welfare.
10. The Commission released its Decision on Sanctions and Reasons with respect to Da Silva and the other respondents in the matter on May 10, 2006 (the “Sanctions Decision”) and the Commission made an Order against Da Silva and the other Respondents on May 10, 2006 (the “2006 Order”).
11. In the Sanctions Decision, the Commission took into account the submissions made by Da Silva during the Sanctions Hearing and, at paragraph 46 of the Sanctions Decision, the Commission referred to Da Silva’s submissions when they stated,
- “Da Silva submitted that he is in poor health and has no future intention of working in the securities industry. He also submitted that he is impecunious and would be unable to afford the \$7,500 costs.”
12. In the 2006 Order, the Commission ordered the following sanctions against Da Silva:
- (a) that pursuant to s. 127(1), clause 2 of the Act, trading, directly or indirectly, in any securities by Da Silva, for his own account or for the account of others, cease for a period of seven years, with the exception that Da Silva be permitted to trade in securities for his own account or for the account of a registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership and interest, provided that:
 - (i) the securities are listed and posted for trading on the Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;
 - (ii) Da Silva does not own legally or beneficially more than one per cent of the outstanding securities of the class or series of the class in question; and
 - (iii) Da Silva must carry out permitted trading through a registered dealer and through accounts opened in his name only and must close any accounts in which he has any legal or beneficial ownership or interest that were not opened in his name only;
 - (b) that pursuant to s. 127(1), clause 3 of the Act, any exemptions contained in Ontario securities law do not apply to Da Silva for a period of seven years, except for those

exemptions necessary to enable Da Silva to trade in securities as permitted by paragraph 59a of this Order; and

- (c) that pursuant to s. 127.1(1) of the Act, Da Silva pay the costs of the Commission investigation in the amount of \$7,500.

11. Paragraph (a), above, sets out the terms and conditions of cease trade order made by the Commission against Da Silva (the “2006 Cease Trade Order”).

- **2007 Examination In The Matter of Limelight Entertainment Inc.**

12. On September 14, 2007, Da Silva was examined, under oath, by Staff of the Commission in connection with Staff’s investigation into the activities of Limelight Entertainment Inc., Carlos Da Silva, David C. Campbell, Jacob Moore and Joseph Daniels (the “September 2007 Examination”). During the September 2007 Examination, Da Silva advised Staff of the following:

- a) That he worked for Limelight Entertainment between December, 2005 and May, 2006;
- b) That he was paid commission by Limelight;
- c) That he was not selling securities in the course of his employment by Limelight;
- d) That he spent a lot of time on the phone and going to meetings while employed by Limelight;
- e) That the payments from Limelight went to the bank account of his company, Premium Resource Marketing Inc. (“Premium”);
- f) That he earned at least \$17,756.00 over a period of four or five months leading up to April of 2006;

13. These statements by Da Silva reveal the misleading nature of Da Silva’s statements made to the Commission during the Sanctions Hearing.

- **The Al-tar Investigation**

14. Also in 2007, Staff began an investigation into the activities of Al-tar Energy Corp. (“Al-tar”), Alberta Energy Corp. (“Alberta EC”) and the persons and corporations connected with Al-tar and Alberta EC (the “Al-tar Investigation”).

15. During the course of the Al-tar investigation, Staff obtained the banking records of Premium and Da Silva’s personal accounts at TD Canada Trust (“TD”) and CIBC.

16. Premium was incorporated on November 22, 2005 by Da Silva. The registered address of Premium was care of Abel Da Silva, 51 Eastpark Boulevard, Scarborough, Ontario, M1H 1C6. Da Silva was listed as the sole director of Premium. There are no other employees of Premium.

17. The TD banking records indicate that account number 5212041 is an account in the name of Premium (the “Premium TD Account”) and the sole signatory is Da Silva.

18. The banking records for the Premium TD Account show that on January 9, 2006, the day that Da Silva made submissions to the Commission during the Sanctions Hearing, the balance in the Premium TD Account was \$16,793.48.

19. The Premium TD Account had a balance of \$30,608.04 on May 10, 2006, the day that the Commission released its Sanctions Decision and the 2006 Order.

20. On December 18, 2007, Da Silva swore an affidavit in connection with the Al-tar investigation. In that affidavit, Da Silva confirms that between July, 2006 and December, 2006, he was paid \$207,000 in consulting fees by Al-tar.

21. Da Silva has still not paid the Commission’s costs order as set out in the Sanctions Decision and the 2006 Order.

- **The Colby Cooper Inc. Investigation, Prosecution, and Conviction**

22. Between April 23, 2007 and August 21, 2007, Da Silva traded the securities of a company called Colby Cooper Inc. to twenty-seven investors and received over \$45,000 in compensation for those sales.

23. On October 23, 2008, a member of Staff swore an Information (the “Information”), under section 23 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended (the “POA”), alleging Da Silva contravened Ontario securities laws contrary to section 122(1)(c) of the Act. The Information specifically alleged the following charge (the “Charge”):

Abel Da Silva, of 51 Eastpark Boulevard, Toronto, Ontario, during a 120 day period last, past and ending on or about the 21st day of August, 2007 at metro Toronto in the Toronto Region did commit the offence of contravening Ontario Securities Laws by trading in securities of Colby Cooper Inc, at a time when he was prohibited from trading in securities by Order of the Ontario Securities Commission dated May 10, 2006, contrary to the *Securities Act* of Ontario section 122(1)(c).

24. On June 4, 2010, Da Silva appeared before Her Worship Justice of the Peace Wassenaar and entered a guilty plea to the Charge.

25. On September 1st, 2010, Da Silva was sentenced to imprisonment for 75 days and to probation for two years with conditions.

III. STAFF’S ALLEGATIONS

26. The specific allegations advanced by Staff are:

- a. On January 9, 2006, Da Silva made statements to the Commission with respect to his employment history and his financial situation, that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to section 122(1)(a) of the Act and contrary to the public interest; and,
- b. Between and including April 23, 2007 and August 21, 2007, Da Silva breached the Sanctions Decision and the 2006 Cease Trade Order of the Commission by trading securities of Colby Cooper Inc., contrary to section 122(1)(c) of the Act and contrary to the public interest.

27. Pursuant to subsections 127(10) 1. and 127(10) 2. of the Act, the June 4, 2010 conviction of Da Silva for an offence related to securities may form the basis of an order in the public interest in Ontario under subsection 127(1) of the Act.

Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED the 20th day of September, 2010.