

IN THE MATTER OF

THE *SECURITIES ACT*,
S.N.B. 2004, c. S-5.5

-and-

IN THE MATTER OF

**MALSBURY INVESTMENT CORPORATION and
SHAYNE LORNE MALSBURY**

(RESPONDENTS)

REASONS FOR DECISION

Date of Order: 20 August 2008

Date of Reasons for Decision: 2 September 2008

Panel:

Donne W. Smith, Panel Chair

Robert M. Shannon, Panel Member

Counsel:

Mark McElman For Staff of the New Brunswick
Securities Commission

Matthew J. Epp For the Respondents

IN THE MATTER OF

**MALSBURY INVESTMENT CORPORATION and
SHAYNE LORNE MALSBURY
(RESPONDENTS)**

REASONS FOR DECISION

1. BACKGROUND

[1] This matter involves an application by Staff (Staff) of the New Brunswick Securities Commission (Commission) for a reciprocal order, under paragraph 184(1.1)(c) of the *Securities Act (Act)*, against the Respondents Malsbury Investment Corporation (MIC) and Shayne Lorne Malsbury (Malsbury).

[2] Paragraph 184(1.1)(c) of the *Act* gives the Commission the power to make certain orders referred to in subsection 184(1) against a person, after providing an opportunity to be heard, if it is in the public interest to do so and if the person is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person.

[3] Staff filed their Application (Application) for an order under subsection 184(1.1) on 17 July 2008. In support of their Application, Staff filed an affidavit (Investigator's Affidavit) of Ed LeBlanc (Investigator), a Senior Investigator with the Commission, sworn on 17 July 2008. The grounds for the Application were that an order had been made by the Alberta Securities Commission (ASC) imposing sanctions, conditions, restrictions or requirements on the Respondents; and that it was in the public interest to issue an order.

[4] A copy of the ASC's Temporary Order issued against the Respondents (ASC Order) was attached to the Investigator's Affidavit. The ASC Order was issued on 3 June 2008, and extended on 18 June 2008, and contains the

following sanctions against the Respondents:

- (a) all trading in securities of MIC cease;
- (b) the Respondents cease trading in all securities; and
- (c) all exemptions contained in Alberta securities laws do not apply to the Respondents.

The ASC Order remains in effect until the ASC's hearing of the matter is concluded and a decision rendered, unless otherwise ordered.

[5] The Application requested that the Respondents contact the Commission by 1 August 2008 to request a hearing. Counsel for the Respondents, Mr. Matthew Epp, (Respondents' Counsel) contacted the Commission prior to this date. Staff and Respondents' Counsel agreed upon terms of a draft order (Consent Order) against the Respondents, with sanctions against the Respondents mirroring those in the ASC order. The parties made no agreement as to the facts in this matter.

[6] The Consent Order was presented to the Panel for consideration, and contained the following terms:

- (a) all trading in securities of MIC shall cease (including, without limitation, the solicitation of trades, or any acts constituting attempts or acts in furtherance of trading, in such securities);
- (b) MIC and Malsbury shall cease trading in all securities (including, without limitation, the solicitation of trades in securities or any acts constituting attempts or acts in furtherance of trading in securities); and
- (c) any exemptions in New Brunswick securities law do not apply to MIC and Malsbury.

2. FACTS

[7] The facts relied upon by the Panel in reaching their decision were those

set out in the Investigator's Affidavit.

[8] MIC is an Alberta corporation, incorporated in 2006, with a registered office in Calgary. Malsbury is the sole director of MIC, and resides in Calgary. The ASC has alleged that MIC and Malsbury have been soliciting investments which would be used for real estate transactions to be carried out by Malsbury on behalf of MIC. The ASC has yet to hold a full hearing into these allegations.

[9] The Investigator's Affidavit states that on 7 July 2008 the Investigator became aware of the ASC Order, and requested from the ASC the documentation relied upon in granting the ASC Order. Enforcement counsel at the ASC advised the Investigator that the ASC was aware of two New Brunswick residents who had invested in MIC.

[10] The Investigator then contacted the New Brunswick investors, who informed the Investigator that they had each invested large amounts of money, together over \$55,000.00, in MIC. One investor had been told by a MIC representative that Malsbury was to use the invested funds for land development in Fort McMurray, and large rates of return (over 20% per month) were promised.

[11] None of the Respondents were or are registered to trade securities in New Brunswick or Alberta, and the Respondents have filed no prospectuses or other materials with the Commission or the ASC, as is required prior to trading in securities.

3. ANALYSIS AND DECISION

a. Test for Reciprocal Orders

[12] Staff's application was made under paragraph 184(1.1)(c) of the *Act*. Prior to the issuance of a reciprocal order under paragraph 184(1.1)(c) of the *Act*, the Panel must be satisfied that the Respondents were provided an opportunity to be heard and that they are subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions,

conditions, restrictions or requirements on the person. The Panel is satisfied that these two conditions have been met, as the Respondents are represented by counsel in this matter and are subject to sanctions and restrictions contained in the ASC Order.

[13] As set out in the Commission's reasons for decisions in *Al-tar Energy Corp. et al.*, issued on 17 December 2007, and *Adcapital Industries Inc.*, issued on 19 August 2008, subsection 184(1.1) gives the Commission the power to make certain orders enumerated in subsection 184(1). However, the Commission may issue these orders only if it is determined to be in the public interest to do so.

[14] Though the parties agreed to the terms of the Consent Order, prior to its issuance the Panel must be satisfied that the terms of the Order are in the public interest. The ASC in *Re Oslund*, 2006 ABASC 1295, and the Commission in both *Al-tar* and *Adcapital*, state that prior to issuing a reciprocal order, the Panel must be satisfied that the requested order would serve a protective purpose for the investing public, in this case New Brunswick residents. Though a nexus with New Brunswick is not specifically required, there must be a compelling reason that issuing the Consent Order is required to protect New Brunswick investors and capital markets.

[15] The Panel in this matter is satisfied that reciprocating the ASC Order in New Brunswick is required to adequately protect New Brunswick residents. Though MIC and Malsbury reside in Alberta, the Panel accepts Staff's evidence that MIC inappropriately solicited significant investment from investors in New Brunswick. The Investigator's Affidavit discloses that at least two New Brunswick residents are at risk of suffering significant financial loss as a result of MIC and Malsbury's actions. Accordingly, the Panel is satisfied that the Consent Order is in the public interest and appropriate to protect New Brunswick investors.

[16] The ASC Order is a temporary order, which has been extended until a hearing is held and the ASC renders its decision in this matter. The Commission's

Consent Order is to remain in effect for the same duration as the ASC Order, to provide New Brunswick residents with protection from the alleged activities of the Respondents while the ASC completes its investigation and holds further hearings. If the ASC Order is made permanent, the Consent Order as well is to become a permanent order of the Commission.

[17] The above constitutes the Panel's reasons for decision for its Order issued on 19 August 2008 pursuant to paragraph 184(1.1)(c) of the *Act*.

Dated at the City of Saint John this 2nd day of September, 2008.

"original signed by"

Donne W. Smith, Panel Chair

"original signed by"

Robert M. Shannon, Panel Member

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