

IN THE MATTER OF THE SECURITIES ACT,
S.N.B. 2004, c. S-5.5, as amended

AND

IN THE MATTER OF

Wayne Mallett
(Respondent)

MOTION

1. **The following relief is being sought by staff:**

An order pursuant to section 184(1)(d) of the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended, that any exemptions under New Brunswick securities law do not apply to Wayne Mallett until otherwise ordered by the Commission.

2. **The grounds for this motion are:**

The Investigation

- a. Mallett is not registered with the Commission to trade in securities.
- b. On 15 August 2008, the Commission issued an Investigation Order pursuant to section 171(1) of the *Securities Act*, S.N.B. 2004, c. S-5.5, (the "*Securities Act*") naming Mallett as one of the subjects of the investigation (the "Investigation Order").
- c. On 15 August 2008, a Commission investigator appointed under the Investigation Order (the "Investigator") sent Mallett a demand to produce certain documents pursuant to section 172(3) of the *Securities Act*.
- d. Mallett responded to the demand for documents by representing, *inter alia*, that he had not sold securities to New Brunswick clients since 1 January 2007, and that he had not received any financial benefits relating to the marketing of securities during this same period.
- e. On 28 August 2008, the Investigator issued a summons to Mallett pursuant to section 173 of the *Securities Act* (the "Summons"). The summons required Mallett to attend and give evidence on 5 September 2008.

- f. During the testimony given under oath and pursuant to the Summons on 5 September 2008 (the "Interview"), Mallett made the following representations:
- i. That since 1 January 2007, he had not traded in securities (including any solicitations or negotiations) with New Brunswick residents;
 - ii. That since 1 January 2007, the only arrangement he had entered into with any issuer or promoter of securities traded with New Brunswick residents was with Berrie White Capital Corporation;
 - iii. That since 1 January 2007, he had received no payments, commissions or other financial benefits from issuers or promoters of securities traded with New Brunswick residents;
 - iv. That he was solely employed in the marketing of tax-assisted charitable donation structures and developing a clientele for the exempt securities promoted by Berrie White Capital Corporation;
 - v. That he had not assisted Villabar Real Estate Inc. ("Villabar") in marketing limited partnership investments in the previous three or four years; and
 - vi. That he received no monies from Villabar since 1 January 2007.
- g. The representations listed at paragraph f, above, constitute misrepresentations designed to mislead the Investigator in the Investigation.
- h. During the Interview, Mallett refused to disclose any information or document relating to bank accounts he held. Such refusal was made on the advice of Mallett's counsel, who took the position that such information was not relevant.

The Brant Park Inn Distribution

- i. On 24 July 2008, Brant Park Inn Limited Partnership distributed \$9,170,000 in securities to 70 New Brunswick investors (the "Brant Park Distribution").
- j. Mallett now purports that at the time of the interview he was engaged by St. Clair Research Associates Inc. ("St. Clair") to provide administrative services to Villabar clients in New Brunswick.
- k. The term of this engagement with St. Clair is purportedly 1 May 2008 until 30 April 2009, and Mallett is purportedly paid \$6,700.00 per month plus HST. Mallett, though legal counsel, provided this information to the Investigator

on 20 October 2008, three days after the Investigator had already obtained it directly from Villabar.

- l. St. Clair is an affiliate of Villabar. Villabar purports that the engagement of Mallett by St. Clair was for the purposes of promoting the Brant Park Distribution.
- m. In May or June 2008, Mallett acted as salesperson in connection with the Brant Park Distribution to New Brunswick investors including D.L., S.M., M.M., and J.B, four residents located in the Saint John area.
- n. These investors attended a presentation concerning the Brant Park Distribution conducted by Mallett and others, and then subsequently met Mallett at a Saint John restaurant to finalize their investments in the Brant Park Distribution. Mallett answered questions, distributed documents, accepted investments funds, and paid for the meal served during the meeting.

Conclusion

- o. The investigation into Mallett's activities in the New Brunswick capital markets is ongoing.
- p. Given Mallett's willingness to mislead the Investigator and to make misrepresentations under oath, it is contrary to the public that he be allowed any exemptions under New Brunswick securities law.

3. **Evidence being relied on:**

- a. The affidavit of Ed LeBlanc, Investigator, sworn the 26th day of November 2008, and
- b. Such further and other evidence as Staff may adduce and the Commission permit, in support of this motion for an interim Order.

DATED at the City of Saint John this 26th day of November, 2008.

<<original signed by>>
Mark McElman
Counsel to Staff of the Commission

New Brunswick Securities Commission
Suite 300, 85 Charlotte Street
Saint John, New Brunswick
E2L 2J2

Tel: (506) 658-3117
Fax: (506) 643-7793

mark.mcelman@nbsc-cvmnb.ca