

IN THE MATTER OF
The *Securities Act*
S.N.B. 2004, c. S-5.5

- and -

IN THE MATTER OF
SANG H. PARK
(Respondent)

REASONS FOR THE DECISION

Date of Hearing: 25 August 2008
Date of decision: 20 January 2009

Panel:

Anne La Forest, Panel Chair
Céline Trifts, Panel Member
Denise LeBlanc, Q.C., Panel Member

Representatives:

Jake van der Laan	For the staff of the New Brunswick Securities Commission
Arthur Doyle	For the Respondent

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1. INTRODUCTION

[1] This matter was commenced on 13 August 2008, when Staff of the Commission (Staff) filed a Settlement Agreement (Agreement) reached between Staff and the Respondent. Within the Agreement, Staff and the Respondent provided an Agreed Statement of Facts (Statement), and also a draft Order containing sanctions agreed upon between the parties.

[2] On 25 August 2008 a Settlement Hearing was held pursuant to paragraph 191(a) of the *Act*, wherein the Panel was asked to approve the Agreement and order the proposed sanctions. Until approved, the Agreement has no legal effect.

[3] At the Settlement Hearing, both parties confirmed their endorsement of the Agreement and their acceptance of its content and of the facts contained in the Statement. Staff and the Respondent also filed a joint submission in support of the Agreement.

[4] The Panel has reviewed the Agreement and considered the submissions of both parties. It accepts the Statement in the Agreement as the evidence upon which to base its decision in this matter. The content of the Statement and

the Agreement was not disputed, and no contrary evidence was provided. For the reasons set out below the Panel approved the Agreement and issued the Order as requested.

2. FACTS

[5] The relevant facts in this matter are set out in the Statement, found in Part II of the Agreement. Between September of 2006 and May of 2007, the Respondent was an employee of Walton International Inc. (Walton), a corporation based in Calgary, and then Walton Capital Management Inc. (Walton Capital), an affiliated company of Walton.

[6] In September of 2006, Walton Capital began the process of attracting New Brunswick investors. The Respondent was the designated Walton employee for New Brunswick, and during the specified period the Respondent came to New Brunswick and provided potential investors with a multimedia presentation and information about the Walton securities opportunity.

[7] The Respondent visited New Brunswick on 10 occasions to give these presentations; as a result, 53 New Brunswick residents decided to purchase Walton securities. The investors purchased these securities under the exempt distribution requirements of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106), which provides exemptions in certain specified circumstances from the registration and prospectus requirements under the *Act* and regulations.

[8] The securities were purchased relying on the "accredited investor" exemption contained in NI 45-106. In order to be classified as an accredited investor, the investor must have an income of at least \$200,000 per year (or \$300,000 per year when combined with a spouse), or \$1,000,000 in net assets. However, in this matter, 22 of the 53 New Brunswick investors in Walton made their investment without meeting the requirements for the accredited investor

exemption. Therefore, these investments did not qualify for the exemption and were subject to the disclosure and registration requirements of the *Act*.

[9] The Respondent admits that he was the person responsible for ensuring that the requirements of NI 45-106 were met. The Respondent was fully aware of the requirements of NI 45-106 and specifically was fully conversant with the “accredited investor” definition. In fact, the accredited investor exemption was the exclusive basis upon which sales of Walton securities were effected in Ontario.

[10] The Respondent acknowledges that it is the person claiming the exemption – not the investor – who must ensure that an exemption under NI 45-106 is in fact available. The Respondent also acknowledges that he is a “person trading”, as contemplated by the Companion Policy to NI 45-106, and therefore had an obligation to ensure compliance with NI 45-106.

[11] The Respondent admits that he failed on 22 occasions to ensure that the accredited investor requirements were met in relation to the New Brunswick investors. He did not review the accredited investor definition as part of his presentation; he made insufficient effort, in most cases, to ascertain that persons investing fell within the accredited investor definition; and he downplayed the requirements of NI 45-106. On one occasion, the Respondent forged a document relating to a NI 45-106 claim.

[12] In March of 2008, when his employer became aware of these errors and the forged document, the Respondent was dismissed with cause from his employment. The commissions the Respondent earned based on these sales were clawed back by Walton. The investments made by investors on the basis of improper accredited investor claims were subsequently made compliant by either refunding the investment or effecting the investment under the Offering Memorandum exemption available under NI 45-106. No investors suffered financial loss as a result of the Respondent’s actions.

[13] The Respondent's actions came to Staff's attention as a result of another investigation. The Respondent fully cooperated with Staff's investigation in this matter. He is remorseful about having failed to comply with New Brunswick securities law, and particularly in relation to the forged document. The Respondent has worked for several years in the securities industry and has no prior history of regulatory non-compliance.

3. FINDINGS AND SANCTIONS

[14] The Respondent admits, and the Panel finds, that the Respondent failed to comply with New Brunswick securities law by not ensuring compliance with the requirements of NI 45-106, and by forging a document relating to an investment transaction.

[15] The Agreement contains sanctions which Staff and the Respondents jointly propose be issued against the Respondents. The sanctions are as follows:

1. pursuant to paragraph 184(1)(c)(ii) of the *Act*, the Respondent shall cease trading in all securities, other than those beneficially owned directly by him, for a period of 10 years;
2. pursuant to paragraph 184(1)(d) of the *Act*, any exemptions available under New Brunswick securities law do not apply to the Respondent, for a period of 10 years;
3. pursuant to subsection 186(1) of the *Act*, the Respondent shall pay an administrative penalty for failing to comply with New Brunswick securities law in the amount of \$15,000; and
4. pursuant to subsection 185(1) of the *Act*, the Respondent shall pay costs of the investigation in the amount of \$3,000.

a. Law

[16] The Panel was asked to approve the Agreement and order the proposed sanctions pursuant to paragraph 191(a) of the *Act*. In deciding whether or not to approve a settlement agreement under paragraph 191(a), the Panel must ensure that the sanctions are within the parameters of what is reasonable. As

stated in *MCJC Holdings Inc., Re* (2002), 25 O.S.C.B. 1133 at para. 4, the Commission must be satisfied that the sanctions proposed in the Agreement “are proportionately appropriate with respect to the circumstances facing the particular respondents.”

[17] The Panel has considered the appropriateness of the Agreement and proposed sanctions with regard to the dual role of the Commission: protecting investors from unfair, improper or fraudulent practices; and fostering fair and efficient capital markets. In exercising their role, as confirmed by the Supreme Court of Canada in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] S.C.R. 132 at paragraphs 42 and 43, the Panel is to act in a protective and preventative fashion. And, as set out in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at paragraph 60, this includes an element of general deterrence.

[18] This Commission has, in several recent decisions, outlined the potentially relevant factors to consider when deciding on the appropriateness of proposed sanctions in a settlement agreement. Similar factors have also been discussed by the Alberta Securities Commission in two 2008 decisions cited by Staff and the Respondents in their joint submissions, *Re TSS Management Corp. et al.*, 2008 ABASC 215 and *Re Lavallee*, 2008 ABASC 78. The relevant factors considered by the Panel in this matter include:

- (a) the seriousness of the allegations proved,
- (b) the respondent’s past conduct,
- (c) mitigating factors,
- (d) the respondent’s experience in the capital markets and the respondent’s level of activity in the capital markets,
- (e) whether the respondent recognizes the seriousness of the improper activity,
- (f) the harm suffered by investors as a result of the respondent’s activities,
- (g) the benefits received by the respondent as a result of the improper activity,

- (h) the risk to investors and the capital markets in the jurisdiction,
- (i) the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities,
- (j) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity,
- (k) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets, and
- (l) previous decisions made in similar circumstances.

b. Analysis of factors

[19] The exemptions contained in NI 45-106 are an effective means to balance investor protection with efficient capital markets. Non-compliance with these requirements is a serious matter; it increases the potential for investor harm and has a significant impact on the efficiency and integrity of capital markets.

[20] In addition to the Respondent's non-compliance with NI 45-106, he has also admitted to forging a document relating to a NI 45-106 claim. Obviously, the Panel considers this forgery to be a serious matter.

[21] The Respondent was an experienced securities salesman and knowledgeable of the requirements of NI 45-106. The Respondent was aware that his actions violated the terms of NI 45-106. His violations resulted in 22 improper accredited investor claims. The level of investment directly related to the Respondent's activities in New Brunswick was very high; 53 people were involved and over \$2,000,000 of investments were at issue.

[22] The improper accredited investor claims were subsequently made compliant by Walton and no investors were harmed as a result of the Respondent's violations. However, this does not diminish the seriousness of the Respondent's actions. He knowingly did not comply with the specific requirements of NI 45-106, requirements put in place for the purposes of

protecting investors and adding efficiency to the capital markets. Exemptions are key to the effective operation of New Brunswick capital market and their abuse can have negative effects on investors and the integrity of the markets.

[23] While not lessening the seriousness of the Respondent's actions, the lack of financial loss suffered by investors was considered by the Panel as a mitigating factor in this matter. Another mitigating factor is the lack of profits received by the Respondent; any commissions he earned on the impugned transactions were clawed back by Walton. Further, as a direct result of his violations, the Respondent's employment was terminated.

[24] The Panel also considered the Respondent's remorse and his cooperation with the Commission in resolving this matter, and the lack of any history of regulatory non-compliance.

c. Decision on proposed sanctions

[25] Having considered the factors set out above, and having reviewed the decisions highlighted by the parties, the Panel finds the Agreement and the proposed sanctions to be reasonable and appropriate in the circumstances.

[26] The 10 year market ban in New Brunswick, coupled with the administrative penalty are significant sanctions which send a strong message of deterrence to both the Respondent and other participants in New Brunswick's capital markets. The sanctions also reflect the seriousness of the Respondent's violations, for though no investors were harmed, the actions of the Respondent directly impact the integrity of the capital markets in the province. The Panel also finds that the amounts of the administrative penalty and costs are appropriate given the extent of the mitigating factors, specifically the Respondent's cooperation.

[27] The Commission's mandate is to protect investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. This mandate includes the maintenance of high

standards of fitness and business conduct to ensure honest and responsible conduct by market participants. The Panel finds that the Agreement and proposed sanctions in this matter are reasonable in light of this mandate and the specific circumstances of this matter.

4. CONCLUSION

[28] It is for the reasons set out above that the Panel found it in the public interest to approve the Agreement and issue the 25 August 2008 Order in this matter.

Dated this 20 day of January, 2009

"original signed by"
Anne La Forest, Panel Chair

"original signed by"
Céline Trifts, Panel Member

"original signed by"
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