

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

- and -

IN THE MATTER OF
BRADLEY ANDREW MURRAY
(Respondent)

REASONS FOR THE DECISION

Date of Hearing: 24 November 2009
Date of Order: 24 November 2009
Date of Reasons for Decision: 26 January 2010

Panel:

Harry Williamson, Q.C., Panel Chair
Kenneth Savage, Panel Member
Sheldon Lee, Panel Member

Representatives:

Mark McElman	For Staff of the New Brunswick Securities Commission
Bradley Andrew Murray	On his own behalf

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REASONS FOR THE DECISION

1. BACKGROUND

[1] On 14 September 2009, Staff (Staff) of the New Brunswick Securities Commission (Commission) filed an Application against the Respondent, Mr. Bradley Andrew Murray (Murray), seeking an order pursuant to subsection 184(1.1)(a)(i) of the New Brunswick *Securities Act* (*Act*). Staff submitted that the Respondent has been convicted of an offence arising from a transaction, business or course of action related to securities and that it was in the public interest that an Order be issued. The Application sought a cease trade order, a denial of exemptions and a prohibition on becoming or acting as a director or officer of any issuer, registrant, or mutual fund manager. Along with the Application, Staff also filed the supporting affidavit of Commission Senior Investigator Ed LeBlanc sworn 11 September 2009.

[2] A Notice of Application was issued on 15 September 2009 and then served on the Respondent. The Respondent notified the Secretary's office that he wished to exercise his right to be heard. A Notice of Hearing was issued on 15 October 2009, scheduling the hearing in this matter for 24 November 2009. The Notice of Hearing was served on the Respondent on 16 October 2009.

[3] The hearing proceeded as scheduled on 24 November 2009. The Respondent appeared at the hearing on his own behalf, without counsel and under guard. Staff counsel appeared to make oral submissions, in addition to

the written pre-hearing submissions filed on 20 November 2009. The Respondent confirmed during the Hearing that he had been served with these submissions.

2. THE FACTS

[4] The Respondent did not contest any of the evidence filed with Staff's Application or the grounds of Staff's Application. The supporting affidavit of Commission Senior Investigator Ed LeBlanc sworn 11 September 2009, and filed on 14 September 2009, was admitted by consent. The Respondent did, however, contest the relief sought. The Respondent's concern was that he not be prevented from operating a company that he currently owns and that he not be prevented from owning and operating a business in New Brunswick in the future.

[5] The incidents giving rise to this Application can be summarized as follows:

- a. on 15 September 2008, and again on 17 September 2008, Murray entered into two separate transactions with T.F., both concerning the purchase of shares in a company called BM Lighting Ltd.
- b. a third agreement between T.F. and Murray for an additional purchase of \$50,000 of shares of BM Lighting Ltd.
- c. Murray was charged with defrauding T.F. of a sum of money exceeding five thousand dollars (s. 362(2)(a) of the *Criminal Code*) and he plead guilty on 10 June 2009.

[6] When asked by the Chair of the Panel, the Respondent acknowledged that the Certificate of Conviction was correct. The Certificate of Conviction stated that the Respondent had been sentenced to two years in prison and probation for three years with supervision for three years and ordered to pay restitution of \$128,500. The Respondent also acknowledged that the conviction arose out of the sale of shares of BM Lighting Ltd.

[7] No further evidence was presented by Staff.

3. JURISDICTION AND MANDATE OF THE COMMISSION

[8] It is the Commission's mandate to protect New Brunswick investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets.

[9] As stated by this Commission in *First Global Ventures, S.A., et al.* issued 21 February 2008 at paragraph 94, the Commission's public interest jurisdiction is neither remedial nor punitive, but rather protective and preventative. The Ontario Securities Commission in *Re Mithas Management Ltd*, (1990), 12 O.S.C.B. 1600, stated that the role of the securities commissions under their public interest jurisdiction is to "protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets".

[10] The grounds for Staff's Application were based on Murray's criminal conviction and the public interest. Subsections 184 (1.1) (a) and 184(1) of the *Securities Act* state as follows:

184(1.1)In addition to the power to make orders under subsection (1), the Commission may, after providing an opportunity to be heard, make one or more of the orders referred to in paragraphs (1)(a) to (d) and (1)(g) to (i) against a person if the person

(a)has been convicted in Canada or elsewhere of an offence

(i)arising from a transaction, business or course of conduct related to securities or exchange contracts, or

(ii)under the laws of the jurisdiction respecting trading in securities or exchange contracts,

....

184(1)The Commission may, if in its opinion it is in the public interest to do so, make one or more of the following orders:

...

(c)an order that

(i)trading in or purchasing cease in respect of any securities or exchange contracts specified in the order, or

(ii)a person specified in the order cease trading in or purchasing securities or exchange contracts, specified securities or exchange contracts or a class of securities or class of exchange contracts;

(d)an order that any exemptions contained in New Brunswick securities law do not apply to a person permanently or for such period as is specified in the order;

...

(l)an order that a person is prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager;

4. ANALYSIS AND CONCLUSIONS

[12] The uncontested evidence was that the Respondent was convicted of a criminal offence arising from a transaction, business or course of conduct related to securities or exchange contracts. Subsections 184(1) and 184(1.1)(a)(i) of the *Securities Act* gives the Commission the power to make a cease trade order, a denial of exemptions and a prohibition on becoming or acting as a director or officer of any issuer, registrant, or mutual fund manager if it believes that it is in the public interest to do so.

[13] In light of the fact that the supervision of the Respondent by the criminal justice system will be for a period of eight years (two years in jail, three years' probation and three years supervision), the Panel has determined that it is in the public interest to grant Staff's Application modified to a period of ten (10) years rather than permanently as requested by Staff. In reaching this conclusion the

Panel felt that a lifetime penalty as requested by Staff would, in this case, be too punitive in light of the penalties already imposed on the Respondent by the criminal courts.

[14] With respect to the Respondent's concern about being allowed to own and operate a business, the criminal activity arose from the sale of shares of a business and it is therefore necessary to place restrictions on the Respondent. The particulars of these restrictions are set out in the Order issued 24 November 2009.

[15] The above constitute the Panel's Reasons for their Decision and resulting Order in this matter, issued on 24 November 2009.

Dated this 26th day of January, 2010.

"original signed by"
Harry Williamson, Q.C., Panel Chair

"original signed by"
Kenneth Savage, Panel Member

"original signed by"
Sheldon Lee, Panel Member

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