Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue Queen Ouest Toronto ON M5H 3S8

Citation: MOAG Copper Gold Resources Inc (Re), 2020 ONSEC 29
Date: 2020-12-14
File No.: 2018-41

IN THE MATTER OF
MOAG COPPER GOLD RESOURCES INC.,
GARY BROWN and BRADLEY JONES

REASONS AND DECISION ON SANCTIONS AND COSTS
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	July 15, 2020	
Decision:	December 14, 2020	
Panel:	M. Cecilia Williams	Commissioner and Chair of the Panel
	Timothy Moseley	Vice-Chair
	Mary Anne De Monte-Whelan	Commissioner
Appearances:	Anna Huculak	For Staff of the Commission
	Peter Cooper	For MOAG Copper Gold Resources Inc.
	Chris Somerville	For Bradley Jones
	No one appearing for Gary Brown	

TABLE OF CONTENTS

REASONS AND DECISION

I. OVERVIEW

[1] In a merits decision dated January 15, 2020 (the **Merits Decision**),[1] the Ontario Securities Commission (the **Commission**) found that Gary Brown (**Brown**), Bradley Jones (**Jones**) and MOAG Copper Gold Resources Inc. (**MOAG**) (together, the **Respondents**) violated a cease trade order of the Commission dated October 13, 2015 (the **Cease Trade Order**), thereby contravening Ontario securities laws.

[2] As a result of breaching the Cease Trade Order, the Respondents raised approximately US$7.4 million by issuing and selling unsecured, convertible US dollar-denominated debentures (**Debentures**) to 92 Taiwan residents.

[3] At the sanctions and costs hearing, Staff of the Commission (**Staff**) requested an order that:

a. trading in any securities of MOAG cease permanently;

b. Brown and Jones be removed permanently from Ontario's capital markets, as more particularly described below;

c. Brown and Jones be required, jointly and severally, to disgorge US$610,000 and Jones be required to disgorge US$6,745,000;

d. Brown and Jones pay administrative penalties of C$200,000 and C$400,000, respectively; and

e. Brown and Jones be required to pay costs of C$30,000 and C$70,000, respectively.

[4] For the reasons that follow, we find that it is in the public interest to order:

a. trading in any securities of MOAG cease permanently;

b. Brown and Jones be removed permanently from Ontario's capital markets, as more particularly described below;

c. Brown and Jones be required to disgorge US$610,000, jointly and severally;

d. Jones be required to disgorge US$2,968,187; and

e. Brown and Jones pay administrative penalties of C$200,000 and C$400,000, respectively.

[5] We also find that Brown and Jones should be required to pay costs of C$30,000 and C$70,000, respectively.

II. PRELIMINARY MATTERS

[6] At an attendance on February 13, 2020, Brown advised that he anticipated having five witnesses testify at the sanctions and costs hearing. Jones indicated that he did not expect to have any witnesses and might testify on his own

[1] *MOAG Copper Gold Resources Inc (Re)*, 2020 ONSEC 3, (2020) 43 OSCB 907

behalf, depending on Staff's submissions. MOAG advised that it would not be calling any evidence at the sanctions and costs hearing.

[7] By order dated February 13, 2020, March 27, 2020, was set as the date by which the Respondents were to file their witness lists and summaries of each witness's anticipated evidence and the sanctions and costs hearing was scheduled to commence on April 27, 2020, and continue on April 29 and 30, 2020. Brown did not file any materials by the March 27, 2020 deadline.

[8] On March 19, 2020, the Commission announced that due to the COVID-19 pandemic, in-person hearings would not be held until further notice. As a result, the sanctions and costs hearing was delayed.

[9] At a teleconference attendance on April 29, 2020, after the parties made submissions about whether Brown should have a further opportunity to present his witnesses' testimony, an order was issued requiring Brown to file his own testimony and the written testimony of any other witnesses by no later than May 21, 2020. Brown did not file any written evidence.

[10] Brown did not participate in a final pre-hearing attendance on May 27, 2020, despite having been properly served with notice of the attendance. At that attendance, the sanctions and costs hearing was set for July 15, 2020.

[11] The sanctions and costs hearing proceeded as scheduled on July 15, 2020, by videoconference. Brown did not attend. Jones attended and was represented by counsel. MOAG was represented by its current CEO, Peter Cooper.

III. ANALYSIS

[12] We turn now to a consideration of what sanctions would be in the public interest.

A. Introduction

[13] The sanctions listed in subsection 127(1) of the *Securities Act* (the **Act**)[2] are protective and are intended to prevent future harm to investors and the capital markets.[3]

[14] Sanctions must be proportionate to the respondent's conduct in the circumstances of the case.[4] The Commission has identified a non-exhaustive list of factors to be considered with respect to sanctions generally, including the seriousness of the misconduct, whether the violations were isolated or recurrent, the respondent's experience in the market, the size of the profit made from the illegal conduct, any mitigating factors, and the likely effect that any sanction would have on the respondent as well as on others.[5]

---

[2] RSO 1990, c S.5

[3] *Bradon Technologies Ltd (Re)*, 2016 ONSEC 19, (2016) 39 OSCB 4907 (***Bradon***) at pars 26, citing *Mithras Management Ltd (Re)* (1990), 13 OSCB 1600 (***Mithras***) at 1610-1611

[4] *York Rio Resources Inc (Re),* 2014 ONSEC 9, (2014) 37 OSCB 3422 (***York Rio***) at para 36, citing *MCJC Holdings Inc (Re),* (2002) 25 OSCB 1133 (***MCJC***) and *Sabourin (Re),* 2010 ONSEC 10, (2010) 33 OSCB 5299 at para 56

[5] *York Rio* at para 34, citing *Belteco Holdings Inc (Re),* (1998) 21 OSCB 7743 at 7746 and *MCJC* at 1136

B. Contraventions of the Act

1. Breach of a Cease Trade Order

[15] The requirement that persons and companies subject to cease trade orders abide by the terms of those orders is essential to the Commission's ability to achieve the purposes and objectives of the Act. Breaching a Commission order is very serious and egregious misconduct.[6]

[16] In this case, MOAG traded approximately US$7.4 million in Debentures while the Cease Trade Order was in effect. Those trades consisted of:

a. approximately US$3.6 million in debentures that were issued for cash (the **New Debentures**); and

b. approximately US$3.8 million in debentures that were issued to holders of maturing debentures (the **Rolled Debentures**).

2. Acts in furtherance of the breach of the Cease Trade Order

[17] Directors and officers are responsible for the operations and affairs of the corporate entities they oversee and manage. It is essential to fair and efficient markets that directors and officers ensure their company's adherence to Commission orders. In this case, Jones's and Brown's conduct, as described in paragraphs 48 to 54 of the Merits Decision, were acts in furtherance of MOAG's improper trading. As a result, they were in breach of the Cease Trade Order.

C. Treatment of Cease Trade Orders

[18] Jones, relying on the Commission's decision in *Hinke (Re)*[7], submits that there needs to be consistency in how breaches of cease trade orders are sanctioned by the Commission. Jones argues that if the Commission sanctions some such breaches severely, and differently from other breaches, the Commission will undermine the principle that all cease trade orders are serious.

[19] In our view, *Hinke* does not support Jones's submission that sanctions for cease trade orders must be consistent. The panel in *Hinke* rejected the proposed approach that a small breach should be considered insignificant. The panel did not suggest that all cease trade orders had to be treated alike.

[20] The non-exhaustive list of factors used by the Commission in assessing sanctions generally demonstrates that sanctions for breaches of Ontario securities law (including of a cease trade order) will, and should, vary based on the specific circumstances of each case.

D. Application of the relevant sanctioning factors

[21] The misconduct in this case was very serious. It was recurring, it extended over 18 months, and it affected many investors.

[22] Brown asked for the Cease Trade Order; yet, after the order was imposed, he was aware sales of the Debentures continued. He monitored funds from those sales coming in to MOAG's bank account and he paid commissions for those sales.

---

[6] *Al-Tar Energy Corp (Re)*, 2010 ONSEC 11, (2010) 33 OSCB 5535 at para 341
[7] *Hinke (Re)*, 2007 LNONOSC 500 (***Hinke***)

[23] Jones knew that the Cease Trade Order was in effect and that the Commission had not proceeded with either of MOAG's partial or full revocation applications. Jones believed that issuing the Debentures in contravention of the Cease Trade Order was in the best interests of MOAG and its investors as it was necessary for MOAG's continued survival.

[24] As a result of the Respondents' misconduct, they obtained approximately US$7.4 million in principal for the Debentures, which has not been repaid. In addition, MOAG has paid no interest on the Debentures since December 2016. MOAG is unable to make any further payments of principal or interest.

[25] Brown and Jones have extensive experience in the market. Brown has participated in the capital markets for approximately 35 years. He has worked as a promoter since 1985 and has run public companies since 1986. As of December 5, 2015, Brown had been a director of reporting issuers for about 40 years.

[26] Jones was a partner at KPMG for 14 years, where he was in charge of the firm's securities industry practice. Since 1995, Jones has been involved in the executive management of a number of public and private companies. He has acted as a director or officer of reporting issuers for more than two decades.

[27] Brown has expressed no remorse. While there is no obligation on a respondent to express remorse, and a respondent's failure to express remorse is not an aggravating factor, the absence of remorse precludes our finding it to be a mitigating factor for Brown. Similarly, we had no evidence to support any other mitigating factors for Brown.

[28] Jones has purported to be remorseful for his conduct and for the ensuing investor harm. However, he continues to attempt to rationalize his actions as having been in the best interest of MOAG and its investors. As a result, we cannot find that he is truly remorseful. A commitment to the survival of the company without regard to the consequences of his actions is no justification for a breach of Ontario securities law.[8]

[29] In our view, Jones's agreed statement of facts is not a mitigating factor. The timing of its execution and the nature of the admissions it contained did not make a positive difference with respect to the substance or length of the merits hearing.

E. Alleged misleading statements

[30] Staff submits that when assessing the seriousness of the misconduct in this case, we should consider misleading statements made by MOAG and Jones to Staff and the public about the improper trading. We disagree.

[31] Statements made by MOAG or Jones may have been about the trades, but they were neither elements of, nor characteristics of, the trades. They are independent of the trades.

[32] The Statement of Allegations in this case did not refer to MOAG's and Jones's statements. It would be unfair to MOAG and Jones if they were to face those allegations now.

[8] *Quadrexx Hedge Capital Management Ltd (Re)*, 2018 ONSEC 3, (2018) 41 OSCB 1023 at para 15

[33] As a result, we give no consideration to those statements when determining the appropriate sanctions and costs against MOAG and Jones.

F. Sanctions sought by Staff

1. Introduction

[34] Staff seeks conduct sanctions against all of the Respondents, and disgorgement orders and administrative penalties against Brown and Jones.

2. Conduct sanctions

[35] Staff asks that the Commission:

a. permanently prohibit trading in any securities of MOAG;

b. in respect of Brown and Jones:

i. permanently prohibit each of them from acquiring or trading securities or derivatives;

ii. order that the exemptions contained in Ontario securities law shall not apply to each of Brown and Jones permanently;

iii. require each of Brown and Jones to resign any position that either of them holds as a director or officer of an issuer, registrant or investment fund manager and prohibit each of them from holding any such position; and

iv. permanently prohibit each of Brown and Jones from becoming or acting as a registrant, investment fund manager or promoter.

[36] Participation in the capital markets is a privilege, not a right.[9] Staff's requested order would essentially deny that privilege to the Respondents.

[37] The Commission's role is to deny that privilege where it concludes, based on a respondent's past conduct, that the respondent's continued participation in the capital markets "may well be detrimental to the integrity of [the] capital markets."[10]

[38] Brown has been subject to a cease trade order by the British Columbia Securities Commission in the past. He breached the Cease Trade Order against MOAG almost immediately after it was issued. Brown did not participate in either the merits hearing or the sanctions and costs hearing. He has shown no recognition of the seriousness of his misconduct or of the harm suffered by MOAG's investors. Brown's actions lead us to conclude that he cannot be trusted to participate in the capital markets in any way. His conduct demonstrates a serious risk to the public.

[39] Jones does not dispute that the conduct sanctions sought by Staff are appropriate. Neither do we. As Jones has acknowledged, he repeatedly breached the Cease Trade Order over a 16-month period. His actions lead us to conclude that he cannot be trusted to participate in the capital markets in any way. His conduct demonstrates a serious risk to the public.

---

[9] *Borealis International Inc (Re),* 2011 ONSEC 11, (2011) 34 OSCB 5261 (***Borealis***) at para 51, citing *Erikson v Ontario (Securities Commission)*, 2003 CanLII 2451, [2003] OJ No 593 (Div Ct) at para 47

[10] *Borealis* at para 16, citing *Mithras* at 1610-1611

[40] As the Commission has found in similar circumstances, only a permanent removal from the capital markets would be proportionate to the type of misconduct found in this case, would be sufficient to protect investors from Brown and Jones, and would deliver the necessary deterrent message to others who might contemplate similar misconduct.

3. Disgorgement

[41] Staff asks the Commission to order that:

a. Brown and Jones, jointly and severally, disgorge US$610,000; and

b. Jones disgorge US$6,745,000.

[42] The purpose of a disgorgement order is not to provide restitution; rather, it is a remedy that seeks to prevent wrongdoers from benefiting from their breaches of Ontario securities law, and to deter those wrongdoers and others from engaging in similar misconduct.[11]

[43] The Commission's power to order disgorgement is found in paragraph 10 of subsection 127(1) of the Act, which provides that if "a person or company has not complied with Ontario securities law, [the Commission may, if it determines it to be in the public interest to do so, issue] an order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance."

[44] If we are to order disgorgement, we must therefore determine what amounts were "obtained" as a result of the Respondents' non-compliance. As the Commission has previously held, "amounts obtained" are not the amounts ultimately retained. In other words, the fact that there may have been expenses or other possible deductions does not change the amounts that were obtained in the first place.[12]

[45] Having said that, while the Commission is authorized to order disgorgement of the full amount obtained by respondents, it need not do so. The Commission has set out various factors that it will take into account in determining whether a disgorgement order is appropriate, and if so, in what amount:

a. whether an amount was obtained by a respondent as a result of the non-compliance with Ontario securities law;

b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to original investors or otherwise;

c. whether the amount obtained as a result of the non-compliance is reasonably ascertainable;

d. whether those who suffered losses are likely to be able to obtain redress; and

e. the deterrent effect of a disgorgement order on the respondents and on other market participants.[13]

---

[11] *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 (***PFAM***) at para 48
[12] *Phillips (Re),* 2015 ONSEC 36, (2015) 38 OSCB 9311 at para 19, aff'd 2016 ONSC 7901 (***Phillips***)
[13] *PFAM* at para 56

[46] Before applying each of those factors to the circumstances of this case, there are several preliminary matters to address.

(a) Preliminary Matters

i. Should the calculation of the "amount obtained" include the Rolled Debentures?

[47] Staff seeks disgorgement of US$7,355,000, being the value of the Debentures issued by MOAG contrary to the Cease Trade Order. That amount is the total of US$3,578,187 for the New Debentures and US$3,776,813 for the Rolled Debentures.

[48] In the Merits Decision, we concluded that MOAG's issuances of the Rolled Debentures were trades that occurred while the Cease Trade Order was in effect, and that they therefore constituted breaches of Ontario securities law.[14] It does not necessarily follow that the value of every improper trade was "obtained" by the Respondents. In this case, we must determine whether the words "amounts obtained" can properly include the rolling over of a debenture, which is the forbearance of an obligation to pay.

[49] Staff cites two previous Commission decisions in which Staff says that the Commission has ordered disgorgement of amounts obtained in cash or another form: *Sino-Forest Corporation (Re)*[15] and *Blue Gold Holdings (Re)*.[16]

[50] In *Sino-Forest*, the Commission ordered disgorgement of the full amount of the proceeds realized through the sale of shares that had been acquired as part of a fraud and whose value had increased as a result of the fraudulent activity. In *Blue Gold Holdings*, the Commission ordered disgorgement of the value of shares that had been received as part of a fraudulent transaction.

[51] In our view, neither *Sino-Forest* nor *Blue Gold Holdings* supports Staff's position. In this case, the consideration MOAG received for the Rolled Debentures was the investors' forbearance on repayment of amounts owed to them for maturing debentures. No new money was received by MOAG from investors for the Rolled Debentures, nor did MOAG receive something that it sold for value or for which a value could be readily calculated.

[52] Had MOAG been able to repay holders of the Rolled Debentures, its obligation to them would have been for the face value of the Rolled Debentures (plus applicable interest), not twice the face value.

[53] While MOAG received something of value in exchange for the Rolled Debentures (*i.e.*, the deferral of its obligation to pay investors for maturing debentures), that value does not fall within the ambit of "amounts obtained" from a breach of the Act. Therefore, we exclude the Rolled Debentures when calculating disgorgement.

---

[14] Merits Decision at paras 46-47

[15] *Sino-Forest Corporation (Re),* 2018 ONSEC 37, (2018) 41 OSCB 5608 (***Sino-Forest***) at paras 193-194

[16] *Blue Gold Holdings Ltd (Re),* 2016 ONSEC 37, (2016) 39 OSCB 10177 (***Blue Gold Holdings****)*

ii. Is either Jones or Brown, or both of them, "directing minds" of MOAG?

[54] Staff asks that Jones and Brown be made jointly and severally liable for any funds ordered to be disgorged, even though the investors' funds flowed to MOAG rather than to Jones and Brown personally. Staff submits that the Commission has held the directing minds of issuers that receive funds through a breach of Ontario securities law are jointly and severally liable for the disgorgement of those funds.

[55] Jones submits that:

a. the Merits Decision did not include a finding that he was a directing mind of MOAG;

b. any allegation that he was a directing mind of MOAG would have to have been made earlier than in oral submissions at the sanctions and costs hearing and would have to have been particularized in greater detail; and

c. there was a period of time during which Brown was attempting to remove Jones from the corporation, so Jones could not have been a directing mind of MOAG during that time.

[56] We reject Jones's submissions.

[57] The absence of an explicit finding in the Merits Decision that Jones was a directing mind of MOAG does not preclude such a finding now. The evidence tendered during the merits hearing is before us for the purposes of the sanctions and costs hearing and we heard submissions from the parties on the issue during the sanctions and costs hearing. Therefore, it is open to us to make a determination on this point.

[58] In the Merits Decision we found that Jones conducted certain activities between:

a. October 13, 2015, and December 18, 2015, when MOAG issued and sold US$610,000 New Debentures;

b. December 19, 2015, and January 16, 2016, when MOAG issued and sold US$2.8 million New Debentures; and

c. January 23, 2017, and February 10, 2017, when MOAG issued and sold US$210,000 New Debentures;

and that such activities were acts in furtherance of MOAG's improper trading.[17]

[59] Evidence of Brown's attempts to remove Jones from the corporation in December 2015 was before us at the merits hearing. However, it is also clear from the record that the removal of Jones as CFO and a Director of the corporation did not impede his ability to conduct acts in furtherance of MOAG's improper trading during the relevant time period.

[60] No one other than Brown and Jones was involved with issuing the Debentures. Jones did not submit, nor is there any evidence to support a conclusion that, Jones was acting on orders from Brown.

[17] Merits Decision at paras 50-51

[61] In the Merits Decision we also found that Brown conducted certain activities that were in furtherance of MOAG's non-compliant issuance of US$610,000 of New Debentures.[18]

[62] Without Jones's and Brown's acts in furtherance of MOAG's trading, MOAG would not have issued or sold the Debentures in contravention of the Cease Trade Order. Their acts were those of MOAG during the relevant periods as outlined above. Therefore, we find that Jones and Brown were directing minds of MOAG.

(b) Application of the disgorgement factors

i. Did the Respondents obtain an amount as a result of their non-compliance with Ontario securities law?

[63] Jones submits that a disgorgement order against him is not appropriate as Staff was unable to prove that he personally obtained any of the funds MOAG raised through its illegal Debenture sales.

[64] It is not a precondition to the imposition of a disgorgement order against an individual respondent that there be evidence that funds from the breach of Ontario securities law flowed to that individual.[19]

[65] We have found that without Jones's and Brown's actions the Debentures would not have been traded in breach of the Cease Trade Order. The fact that there was no finding that either profited personally from that activity does not prevent us from imposing a disgorgement order on either or both of them.

ii. Seriousness of the misconduct and whether the misconduct caused serious harm

[66] As we have found, Jones's and Brown's misconduct was very serious. It caused investors to lose all their funds.

[67] We do not accept Jones's submission, rooted in the Commission's decision in *M P Global Financial Ltd (Re),*[20] that because this case does not involve fraud, we should reduce the amount of any disgorgement order. In *M P Global Financial*, the respondents traded contrary to applicable registration and prospectus requirements. While the panel noted that the case did not involve an allegation of fraud when it declined to order full disgorgement in all the circumstances, that decision cannot be read to exclude the possibility that full disgorgement would be appropriate in a case involving similarly serious findings.

[68] It would be contrary to the public interest for us to accede to Jones's submission. Unlike the respondents in *M P Global Financial*, who were found to have breached rules of general application, Jones raised funds in knowing defiance of a Commission order directed specifically at MOAG. The two cases are not comparable.

---

[18] Merits Decision at paras 52-53
[19] *PFAM* at para 60
[20] *M P Global Financial Ltd (Re)*, 2012 ONSEC 35, (2012) 35 OSCB 9061 (***M P Global Financial***)

iii. Is the amount obtained as a result of the non-compliance reasonably ascertainable?

[69] As noted above, in considering disgorgement we exclude the amount of the Rolled Debentures. The amount of the New Debentures is clear:

a. between October 13, 2015, and December 18, 2015, while Brown was a director, president and CEO, and Jones was a director, MOAG issued US$610,000 in New Debentures; and

b. between December 19, 2015 and February 10, 2017, while Jones was either a director, CEO and CFO or a consultant, MOAG issued US$2,968,187 in New Debentures.[21]

iv. Are those who suffered losses likely to be able to obtain redress?

[70] The onus does not lie on Staff to demonstrate that victims of misconduct are unlikely to obtain redress. The difficulties inherent in such a determination would impose a burden that is inconsistent with the Commission's investor protection mandate. Rather, if the Respondents were to show that those who suffered losses are likely to obtain redress, the Commission might reduce the disgorgement amount, or not order any disgorgement at all.[22]

[71] The Respondents adduced no such evidence.

v. Deterrent effect on the Respondents and others

[72] It is essential both for the protection of investors and for the promotion of confidence in the capital markets that those engaged in offering securities to the public demonstrate respect for securities law and comply with Commission orders.

[73] Brown and Jones ignored their obligations under Ontario securities law, repeatedly and deliberately trading in breach of the Cease Trade Order.

[74] It is necessary to deter Brown and Jones and others from engaging in similar conduct and to demonstrate, unequivocally, that such behaviour is unacceptable. It is in the public interest to require the Respondents to disgorge the sums obtained as a result of their breach of the Cease Trade Order, specifically:

a. Brown and Jones, jointly and severally, the sum of US$610,000; and

b. Jones the sum of US$2,968,187.

4. Administrative penalty

[75] Staff asks that the Commission order that:

a. Brown pay an administrative penalty of C$200,000; and

b. Jones pay an administrative penalty of C$400,000.

[76] The Commission has stated in previous decisions that the purpose of administrative penalties is to "deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message

[21] Merits Decision at para 50
[22] *PFAM* at para 70

to other market participants that the conduct in question will not be tolerated in Ontario capital markets."[23] Thus the Commission intends that administrative penalties achieve both specific and general deterrence.

[77] In support of its position, Staff directed our attention to three previous Commission decisions.

[78] In *Da Silva (Re)*[24] an individual respondent made materially misleading statements to the Commission about his employment history and financial situation and sold C$45,280 in securities in breach of a cease trade order that had been made against him following a sanctions and costs hearing in another Commission matter. In considering the administrative penalty, the Commission commented on the seriousness of the misconduct as well as the importance of specific deterrence, given the respondent's recidivism.[25] The Commission ordered that the individual respondent pay an administrative penalty of C$250,000.[26]

[79] *Gold-Quest (Re)*[27] resulted in an administrative penalty of C$300,000 against two respondents who had entered into an agreed statement of facts involving two investment schemes under which a total of approximately US$3.3 million in securities was issued. One of the respondents admitted to breaching the prospectus and dealer registration requirements of the Act in connection with the trading.[28] He also admitted that certain trades in the second investment scheme had breached a temporary cease trade order that had been made against him in an earlier proceeding.[29] The amount raised in breach of the temporary order was unclear, but it appeared that more than 69 investors had purchased the securities while the temporary order was in place.[30]

[80] In *Borealis (Re),* the Commission ordered one of the respondents (who had raised approximately C$610,000 from four investors) to pay an administrative penalty of C$300,000.[31] None of the investors incurred any losses and, in fact, investors received the promised 18% returns on their investments. The Commission found that the respondent had breached the prospectus and dealer registration requirements, as well as a temporary cease trade order that had been made against him in another proceeding.[32]

[81] We note that *Gold-Quest* and *Borealis* both involved additional breaches not applicable in this case, *i.e.*, breaching the prospectus and dealer registration requirements of the Act.

[82] Jones submits that these three decisions are distinguishable from the matter before us. Specifically, Jones argues that none of the comparator decisions involved a cease trade order made at the request of a respondent (*i.e.*, Brown in

---

[23] *PFAM* at para 78, citing *Limelight Entertainment Inc (Re)*, 2008 ONSEC 28, (2008) 31 OSCB 12030 at para 67
[24] *Da Silva (Re),* 2012 ONSEC 32, (2012) 35 OSCB 8822 (***Da Silva***)
[25] *Da Silva* at para 15
[26] *Da Silva* at para 17
[27] *Gold-Quest International (Re),* 2010 ONSEC 30, (2010) 33 OSCB 11179 (***Gold-Quest***)
[28] *Gold-Quest* at para 92
[29] *Gold-Quest* at para 94
[30] *Gold-Quest* at paras 23 and 26
[31] *Borealis* at para 49
[32] *Borealis* at para 30

this instance) who fundamentally misunderstood the order being requested and who did not contemplate the order prohibiting the conduct being sanctioned.

[83] In addition, Jones submits that, by issuing the Cease Trade Order, the Commission unintentionally embroiled itself in a private corporate dispute between Brown and Jones about certain loans recorded in MOAG's financial statements and cross-allegations between Brown and Jones of misappropriation of funds.

[84] Because Brown did not participate in the merits hearing or the sanctions and costs hearing, we have no basis to conclude that he did not understand the implications of the Cease Trade Order with respect to MOAG's ability to continue to trade the Debentures.

[85] Regardless of Brown's understanding of the implications of the Cease Trade Order, however, and whatever private disputes may have existed between Jones and Brown, Jones was aware the Cease Trade Order was in effect and that MOAG's continued issuance and sale of Debentures, and his acts in furtherance of that activity, were in breach of that order.

[86] While the three decisions cited by Staff are not directly comparable (two featured other significant breaches of the Act, and none of them featured sums as significant as was raised by MOAG), they do assist us. In our view, given the seriousness of the misconduct and the harm to investors, administrative penalties of C$200,000 for Brown and C$400,000 for Jones, are proportionate, are sufficient to act as specific and general deterrence, and are appropriate in all the circumstances.

5. Appropriateness of Financial Sanctions

[87] Jones submits that severe financial sanctions, such as those requested by Staff, are not warranted in the circumstances if permanent market participation bans are also ordered against him. Jones submits that the negative impact of market participation bans on his life, his ability to pay financial sanctions, and the fact that he is near the end of his career and opportunities for economic participation for seniors is extremely difficult as a result of the COVID-19 pandemic, all support the Commission not imposing financial sanctions against him.

[88] Staff submits that Jones's financial circumstances are not relevant in this case and the burden is on Jones to tender evidence of his limited ability to pay. He has not done so. Staff also submits that there is no evidence that Jones is of average means or that he is at the end of his working life, and that financial sanctions in addition to conduct sanctions are appropriate against Jones.

[89] We see no reason to reduce or eliminate the administrative penalty or disgorgement order against Jones. The disgorgement order fairly represents the amount improperly obtained and the administrative penalty is appropriate, for the reasons set out above. It would be perverse for us to extend to Jones the sympathy he seeks because of his age and the pandemic, when his own misconduct denied his victims, many or all of whom may be subject to the same or greater challenges, any such sympathy.

IV. COSTS

A. Introduction

[90] We turn now to consider Staff's request that Brown and Jones pay some of the costs associated with this matter.

[91] Given the Commission's finding that Brown and Jones did not comply with Ontario securities law, section 127.1 of the Act empowers the Commission to order them to pay the costs of the investigation and/or hearings in this matter. Such an order is not a sanction; instead it allows the Commission to recover some of the costs associated with investigations and hearings.

B. Staff's Request

[92] Staff submitted evidence supporting total costs of the investigation and proceeding in this matter of C$279,438.19. That sum is made up of Staff time of C$270,405.00 and disbursements of C$9,033.19. The amount for Staff time is based on hourly rates previously approved by the Commission, and excludes, among other things, time spent:

a. by members of the Commission's Corporate Finance Branch;

b. by Staff in the Enforcement Branch's Case Assessment and E-Discovery and Analytics units;

c. by the initial primary investigator;

d. by law clerks, students-at-law and assistants;

e. by members of Staff who recorded 35 or fewer hours on the file; and

f. preparing for and attending the hearing on sanctions and costs.

[93] To that reduced amount of C$279,438.19, Staff has applied a further discount, and seeks costs of C$30,000 from Brown and C$70,000 from Jones.

C. Analysis

[94] Brown's and Jones's misconduct was serious. Numerous investors suffered significant harm. It was important that there be an appropriate regulatory response, in the form of an investigation into the misconduct and a hearing to consider the merits of Staff's allegations.

[95] There was nothing about Staff's conduct that unduly lengthened the proceeding. While we found it unnecessary to address certain of Staff's allegations,[33] those allegations neither caused the proceeding to be longer nor otherwise contributed to greater costs.

[96] Jones submits that his filing of an agreed statement of facts should entitle him to a further reduction in the amount of costs for which he is liable.

[97] We do not accept that submission. The agreed statement of facts was limited in scope and did not include findings we made in the merits decision that support Staff's request for a disgorgement order. The merits hearing lasted for only three days. The insignificant reduction in hearing time that might be attributed to

[33] See paras 55 to 61 of the Merits Decision

Jones's admitted facts is more than accounted for by the significant discount that Staff has applied in reaching its requested amount.

[98] We accept Staff's proposed apportionment of the costs between Brown and Jones. A 30/70 split fairly reflects the periods of time during which Brown or Jones had primary responsibility for the misconduct,[34] and the fact that the issuance of the Debentures began when Brown was president and CEO.

[99] Staff's request for costs is reasonable and appropriate in the circumstances. We will order that Brown pay C$30,000 and that Jones pay C$70,000.

V. CONCLUSION

[100] For the reasons set out above, we shall issue an order as follows:

a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of MOAG shall cease permanently;

b. in respect of Brown:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Brown shall cease permanently;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, Brown is prohibited permanently from acquiring any securities;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, the exemptions contained in Ontario securities law shall not apply to Brown permanently;

iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Brown shall immediately resign from any positions he holds as a director or officer of any issuer or registrant;

v. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Brown is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;

vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Brown is permanently prohibited from becoming or acting as a registrant or promoter;

vii. pursuant to paragraph 9 of subsection 127(1) of the Act, Brown shall pay an administrative penalty of C$200,000, which amount shall be designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act;

viii. pursuant to paragraph 10 of subsection 127(1) of the Act, Brown shall be required, jointly and severally with Jones, to disgorge to the Commission the sum of US$610,000, which amount shall be designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act;

ix. pursuant to section 127.1 of the Act, Brown shall pay costs of C$30,000 to the Commission; and

[34] See paras 50 and 52 of the Merits Decision

c. in respect of Jones:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Jones shall cease permanently;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, Jones is prohibited permanently from acquiring any securities;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, the exemptions contained in Ontario securities law shall not apply to Jones permanently;

iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Jones shall immediately resign from any positions he holds as a director or officer of any issuer or registrant;

v. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Jones is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;

vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Jones is permanently prohibited from becoming or acting as a registrant or promoter;

vii. pursuant to paragraph 9 of subsection 127(1) of the Act, Jones shall pay an administrative penalty of C$400,000, which amount shall be designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act;

viii. pursuant to paragraph 10 of subsection 127(1) of the Act, Jones shall be required to disgorge to the Commission:

(a) jointly and severally with Brown, the sum of US$610,000, and

(b) the sum of US$2,968,187,

which amounts shall be designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act; and

ix. pursuant to section 127.1 of the Act, Jones shall pay costs of C$70,000 to the Commission.

Dated at Toronto this 14th day of December, 2020.

"M. Cecilia Williams"
M. Cecilia Williams

"Timothy Moseley"
Timothy Moseley

"Mary Anne De Monte-Whelan"
Mary Anne De Monte-Whelan