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Citation: Miner Edge Inc (Re), 2021 ONSEC 31
Date: 2021-12-22
File No.: 2019-44

IN THE MATTER OF
MINER EDGE INC., MINER EDGE CORP. and RAKESH HANDA

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

Hearing:	October 18 and November 15, 2021	
Decision:	December 22, 2021	
Panel:	Wendy Berman	Vice-Chair and Chair of the Panel
Appearances:	Rikin Morzaria Christina Galbraith	For Staff of the Commission
	Simon Bieber Jordan Katz	For Miner Edge Inc., Miner Edge Corp. and Rakesh Handa

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REASONS AND DECISION

I. OVERVIEW

[1] Staff alleges that the respondents, Miner Edge Inc., Miner Edge Corp. (collectively **Miner Edge**) and Rakesh Handa raised approximately $170,600 from 90 investors through a fraudulent scheme to sell investments in a purported cryptocurrency mining company and misappropriated these funds for personal use.

[2] This proceeding is a combined merits and sanctions hearing pursuant to the order of the Commission dated October 18, 2021.[1]

[3] On October 12, 2021, an agreed statement of facts was filed jointly by Staff and the respondents. No other evidence was presented by Staff or by the respondents with respect to the allegations brought by Staff. My findings on the merits are based solely on the agreed statement of facts and on oral submissions made by Staff and counsel for the respondents.

[4] For the reasons set out below, I find that the respondents contravened Ontario securities laws by perpetrating a fraud on investors, engaging in the business of trading securities without registration and illegally distributing securities. The respondents actively promoted and solicited investments in Miner Edge and made false and misleading statements to investors about the business and operations of Miner Edge, the intended use of investors' funds and anticipated investment returns. The respondents raised approximately $170,600 and misappropriated most of the invested funds for personal use. As a result of the respondents' fraudulent misconduct, investors lost all their invested funds. I also find that Mr. Handa misled Staff during its investigation and breached the confidentiality of Staff's investigation.

[5] I also find that as a result of their contraventions of Ontario securities laws, it is in the public interest for the respondents to be permanently prohibited from participating in Ontario's capital markets, to disgorge to the Commission $170,600, pay an administrative penalty of $500,000 and pay costs in the amount of $100,000.

II. BACKGROUND

[6] From January 2018 to May 2019, Miner Edge and Mr. Handa promoted an opportunity to invest in Miner Edge's cryptocurrency mining operations and solicited investors through direct solicitations and an online campaign through a website and various social media platforms. Mr. Handa was the sole director, shareholder, chief executive officer and directing mind of Miner Edge.

[7] The respondents raised approximately $170,600 from 90 investors by making false representations related to:

a. the business and operations of Miner Edge (that it was a cryptocurrency mining enterprise and was finalizing two mining locations in Canada);

[1] (2021) 44 OSCB 8745

b. the nature of the investment (that it was a right to participate in the profits of Miner Edge in the form of a share, token or an initial coin offering);

c. the use of the investment proceeds (that the invested funds would be used to set up mining facilities, software development, licensing and research and development and administrative expenses); and

d. the expected returns on the invested funds (that investors would earn annual returns in excess of 100%).

[8] Miner Edge never engaged in any cryptocurrency mining activities, had no operations, generated no revenue, and took no meaningful steps to engage in any revenue generating activity. Investors' funds were not invested in Miner Edge and instead most of the investors' funds were diverted for the personal benefit of Mr. Handa. The investors never received any return on their investment and lost all their invested funds.

III. ANALYSIS OF THE MERITS

A. Introduction

[9] I turn now to my analysis of the principal issues raised by Staff's allegations:

a. Were the investments "securities"?

b. Did the respondents engage in the business of trading in securities without being registered contrary to subsection 25(1) of the *Securities Act*[2] (the **Act**)?

c. Did the respondents distribute securities without a prospectus, and without any available exemptions from the prospectus requirement contrary to subsection 53(1) of the Act?

d. Did the respondents commit fraud contrary to section 126.1(b) of the Act and make false and misleading statements to investors about the purported cryptocurrency mining activities, the use of investor funds and expected returns on invested funds contrary to subsection 44(2) of the Act?

e. Did Mr. Handa authorize, permit or acquiesce in Miner Edge's breaches of the Act, such that he is deemed pursuant to section 129.2 of the Act, to have also not complied with Ontario securities law?

f. Did Mr. Handa mislead Staff contrary to subsections 122(1)(a) of the Act?

g. Did Mr. Handa improperly disclose the name of an individual to be examined by Staff contrary to subsection 16(1) of the Act?

h. Did the respondents engage in conduct contrary to the public interest?

[2] RSO 1990, c S.5

B. Were the investments in Miner Edge "securities"?

[10] As a preliminary issue, I must determine whether the investments in Miner Edge sold to investors were "securities", as that term is defined in s. 1(1) of the Act. I conclude that they were.

[11] The term "security" is broadly defined by a non-exhaustive list of 16 enumerated categories of instruments, which includes "investment contract". Staff alleges that each investment distributed by Miner Edge and Mr. Handa was an "investment contract".

[12] As articulated by the Supreme Court of Canada[3] and adopted by the Commission in numerous cases,[4] an investment contract comprises four elements:

a. an investment of money;

b. with a view to a profit;

c. in a common enterprise where the success or failure of the enterprise is interwoven with, and dependent on, the efforts of persons other than the investors; and

d. where the efforts by those other than the investor are undeniably significant ones, those managerial efforts which affect the success or failure of the enterprise.

[13] Miner Edge and Mr. Handa solicited and sold to investors an interest or right to participate in the profits from Miner Edge's purported cryptocurrency mining operation. The respondents represented that the invested funds would be used to establish and operate mining centres in Canada to mine cryptocurrencies and that investors would receive substantial returns from the cryptocurrency mining operation.

[14] Some investors were told that they would receive a "Miner Edge token" or Miner Edge initial coin offering" or a "Miner Edge share" or other "interest" in Miner Edge and that such instrument would be delivered to the investor. No instrument for the investment, whether a share, token or otherwise was delivered to investors.

[15] Miner Edge and Mr. Handa admit this right to participate in the profits of Miner Edge was an investment contract and that they solicited and sold securities to investors.

[16] The investors invested money with a view to profit in a common enterprise, being a cryptocurrency mining operation. The investors were entirely dependent on the efforts of Miner Edge and Mr. Handa for the success or failure of the cryptocurrency mining operation and the generation of any profits from this enterprise.

[17] Based on the above, I am satisfied that the four-part test for an investment contract is met. I conclude that the arrangement to participate in Miner Edge's profits was an investment contract and a security within the meaning of the Act. I will refer to this security as a profit participation right.

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[3] *Pacific Coast Coin Exchange v Ontario (Securities Commission)*, [1978] 2 SCR 112 at 127

[4] For example, see *Meharchand (Re),* 2018 ONSEC 51, (2018) 41 OSCB 8434 (***Meharchand***) at para 91

[18] Although the respondents used different terminologies for the investment with various investors, including referring to it as "Miner Edge token", an "initial coin offering", a "share" or other "interest", the true nature of the investment was an investment contract. Accordingly, the references to token or coin offering in the agreed statement of facts did not impact my determination.

C. Did the respondents engage in the business of trading securities?

[19] A person or company must be registered under Ontario securities law to engage in the business of trading in securities unless an exemption applies.[5]

[20] The registration requirement is a cornerstone of the securities regulatory regime designed to ensure that those who engage in trading related to securities are proficient and solvent, and that they act with integrity. Unregistered trading or advising defeats some of these necessary legal protections and undermines investor protection and the integrity of the capital markets.[6]

[21] Neither Miner Edge nor Mr. Handa were ever registered in any capacity under the Act, and they admit that no exemptions from the registration requirements applied to their activities.

[22] Therefore, the only question I must determine is whether the respondents engaged in the business of trading securities. To do so, I am required to determine whether their conduct constituted "trading", and if so, whether that conduct was carried out for a business purpose.

[23] As outlined above, I have concluded that the respondents' actions in distributing the profit participation rights constituted "trading" in securities of Miner Edge within the meaning of the Act.

[24] In determining whether the conduct was carried out for a business purpose, the Commission has previously relied on various factors including whether the respondent undertook activities similar to a registrant, directly or indirectly solicited securities transactions, received or expected to receive compensation for the activity and carried on these activities with repetition or regularity.[7]

[25] The respondents admit that they engaged in the following activities:

a. ongoing and regular efforts to promote investment in Miner Edge and to solicit investors to purchase profit participation rights over a period of more than one-year;

b. developing promotional materials to solicit investments in Miner Edge which made exaggerated claims about its cryptocurrency mining business and operations and potential returns from investing in Miner Edge;

c. formulating content for and maintaining a publicly accessible website with promotional materials relating to the Miner Edge investment opportunity;

d. maintaining an online presence on various social media platforms to connect with potential investors and market investment opportunities in Miner Edge;

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[5] Act, s 25(1)
[6] *Al-Tar Energy Corp (Re),* 2010 ONSEC 11, (2010) 33 OSCB 5535 (***Al-Tar Energy Corp***) at para 81
[7] *Meharchand* at para 111

e. meeting with numerous potential investors to promote investment opportunities in Miner Edge and to solicit purchases of profit participation rights;

f. selling profit participation rights in Miner Edge to investors and representing that investors would receive Miner Edge tokens, fiat currency, shares or another form of interest in Miner Edge; and

g. directing investors to wire funds to various bank accounts controlled by or associated with Mr. Handa and accepting those funds for the purchase of profit participation rights.

[26] By carrying out these activities, the respondents regularly and continuously engaged in extensive efforts over an extended period to solicit investment in Miner Edge. The respondents succeeded in selling profit participation rights to 90 investors for total proceeds of $170,600. By so doing, the respondents engaged in activities that were similar to those of a registrant.

[27] By distributing and accepting investor funds for the purchase of profit participation rights, the respondents engaged in soliciting and trading securities and expected to and did receive financial compensation, being the funds from investors.

[28] The respondents engaged in activities that were similar to those of a registrant continuously for a lengthy period with the expectation of significant compensation from such activity.

[29] I find that the respondents were engaged in the business of trading in securities within the meaning of the Act without being registered to do so. Accordingly, the respondents contravened s. 25(1) of the Act.

D. Did the respondents engage in an illegal distribution of securities?

[30] A person or company must not distribute a security without a prospectus, unless an exemption applies.[8] The prospectus requirement is a cornerstone of Ontario's securities regulatory regime designed to ensure that investors receive the necessary information to make an informed investment decision.[9]

[31] The profit participation rights in Miner Edge were investment contracts and securities as defined in the Act. Miner Edge sold $170,600 in profit participation rights to 90 investors. The profit participation rights were previously unissued securities and accordingly the issuance of these rights was a "distribution" as defined in the Act.[10]

[32] The respondents admit that they distributed the profit participation rights without filing a preliminary prospectus or prospectus and without an applicable exemption from the prospectus requirement.

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[8] Act, s 53(1)

[9] *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40, (2019) 43 OSCB 35 at para 168

[10] Act, s 1(1), "distribution" definition at para (a); *Bradon Technologies Ltd (Re),* 2015 ONSEC 26, (2015) 38 OSCB 6763 (***Bradon Technologies Ltd***) at paras 131 and 139; *Al-Tar Energy Corp* at paras 139-141

[33] I find that the respondents engaged in a distribution of securities without filing a preliminary prospectus or prospectus, and without an applicable exemption from the prospectus requirement, and therefore contravened s. 53(1) of the Act.

E. Did the respondents perpetrate a fraud on investors relating to securities and make false or misleading material statements to investors?

[34] The Act makes it an offence for a person or company to perpetrate a fraud on investors pursuant to s. 126.1(1)(b). The elements of fraud under the Act are:

a. the prohibited act (often called "actus reus"), which is established by proof of an act of deceit, falsehood or some other fraudulent means and deprivation caused by the prohibited act; and

b. the required guilty mind or wrongful intention (often called "mens rea"), which is established by direct evidence of subjective awareness of the prohibited act and its consequential deprivation. Subjective awareness can also be inferred from the dishonest act itself or established by showing the respondent was reckless.[11]

[35] A corporation may be found to have committed fraud under the Act if the corporation's directing mind knew or ought reasonably to have known that the actions of the corporation were fraudulent.[12]

[36] A person or company is prohibited from making a false or misleading statement pursuant to s. 44(2). To find a contravention of s. 44(2), I must be satisfied that the respondents made an untrue statement about the investment in Miner Edge, or omitted information to prevent the statement from being false or misleading, that a reasonable investor would consider relevant in deciding whether to enter or maintain a trading relationship with the respondents.[13]

[37] In the agreed statement of facts, the respondents admit that they raised $170,600 from investors by making false representations related to the business activities of Miner Edge, the nature of the investment and the use of, and expected returns on, the invested funds. Specifically, the respondents made false statements to investors that:

a. Miner Edge was a cryptocurrency mining enterprise, was finalizing two mining locations in Manitoba and Quebec and had negotiated a power supply with Quebec Hydro;

b. Miner Edge had a chief technology officer, a chief investment officer and a chief management officer;

c. the investment proceeds would be used to set up mining facilities, software development, licensing and research and development and administrative expenses;

d. investors would earn annual returns in excess of 100% on their investment; and

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[11] *R v Théroux,* [1993] 2 SCR 5 at para 24; *Black Panther Trading Corp (Re),* 2017 ONSEC 8, (2017) 40 OSCB 3727 (***Black Panther Trading Corp***) at paras 115-116

[12] *Al-Tar Energy Corp* at para 221

[13] *Winick (Re)*, 2013 ONSEC 31, (2013) 36 OSCB 8202 at para 156

e. in the case of one investor that the Miner Edge investment would assist his application to immigrate to Canada.

[38] The respondents admit that they made such statements both directly to investors and through promotional materials disseminated by the respondents through an online website and various social media platforms.

[39] The respondents admit that:

a. Miner Edge never engaged in any cryptocurrency mining activities, had no operations, generated no revenue, and took no meaningful steps to engage in any revenue generating activity;

b. Miner Edge did not have any individuals holding or performing the above officer positions;

c. no steps were taken by Mr. Handa to submit any immigration application for the investor, who was also a client of Mr. Handa's immigration consulting business;

d. investors' funds were not invested in Miner Edge and instead most of the investors' funds were diverted for the personal benefit of Mr. Handa; and

e. the investors lost all their invested funds.

[40] The respondents also admit that by engaging in these activities they perpetrated a fraud on investors contrary to s. 126.1(1)(b) of the Act and Mr. Handa admits that he made false statements to investors about matters that a reasonable investor would consider relevant in deciding to purchase securities of Miner Edge contrary to s. 44(2) of the Act.

[41] Mr. Handa was fully aware of the false information provided to investors and that the investors' funds were misappropriated for his personal use. He orchestrated the investment scheme, created website and social media promotional material, and raised funds from investors with full knowledge that there was no legitimate underlying cryptocurrency mining business and that investors would be deprived of their funds.

[42] All the statements to investors about the business and operations of Miner Edge, the intended use of the invested funds and the anticipated returns were outright fabrications. By diverting the invested funds for improper purposes, the respondents also knowingly misused investors' funds, thereby causing a deprivation to the investors.

[43] As Mr. Handa was the directing mind of Miner Edge, his knowledge of these fraudulent acts is attributable to Miner Edge.

[44] I find that Miner Edge and Mr. Handa knowingly committed numerous acts of deceit, falsehoods and other fraudulent means that deprived investors of their funds and perpetrated a fraud on investors contrary to s. 126.1(b) of the Act.

[45] I also find that Miner Edge and Mr. Handa made numerous false or misleading statements to investors through direct discussions with investors and information and promotional materials disseminated on the website and various social media platforms. These statements went to the core of the proposed investment in Miner Edge, being the anticipated returns and the nature of Miner Edge's business, operations, and revenue generation, and would unquestionably be

relevant to any reasonable investor. The respondents therefore contravened s. 44(2) of the Act.

F. Did Mr. Handa authorize, permit or acquiesce in Miner Edge's misconduct?

[46] Pursuant to s. 129.2 of the Act, a director or officer is liable for a breach of Ontario securities law by the issuer where the director or officer authorized, permitted or acquiesced in the issuer's non-compliance with the Act. The threshold for liability under s. 129.2 of the Act is low.[14]

[47] Mr. Handa was the sole director and directing mind of Miner Edge. He orchestrated the profit participation right investment scheme, interacted directly with all investors, and directed all the activities of Miner Edge related to this scheme. Finally, Mr. Handa admits that he authorized the non-compliance with Ontario securities law by Miner Edge related to the investment scheme.

[48] Accordingly, I find that Mr. Handa contravened s. 129.2 of the Act.

G. Did Mr. Handa mislead Staff?

[49] A person is prohibited from making a statement to Staff during an investigation that is materially false or misleading or that omits necessary facts pursuant to s. 122(1)(a) of the Act.

[50] Mr. Handa admits that during two examinations of him by Staff he made various false and misleading statements, while under oath, about the profit participation investment scheme, the status of Miner Edge's business operations, the nature and extent of communications with investors and the role of various investors in the business of Miner Edge. Mr. Handa also admits that he concealed information from Staff relating to three investors and their payments into bank accounts related to Mr. Handa.

[51] Mr. Handa admits that he failed to disclose and concealed important information and documents from Staff that he was compelled to provide pursuant to s. 13 of the Act, including bank documentation, records of funds from investors and funds paid to him and Miner Edge and email communications between him and investors.

[52] I find that Mr. Handa was not truthful to Staff during his examinations and that his false statements and omissions, including the concealment of information and documents, were material to the Miner Edge investment scheme.

[53] Accordingly, Mr. Handa contravened s. 122(1)(a) of the Act. In my view, his attempts to mislead Staff while he was under oath demonstrate a serious disregard for the Commission's investigative process.

H. Did Mr. Handa improperly disclose the name of an individual to be examined by Staff?

[54] Disclosure of the name of any person examined or sought to be examined by Staff under a summons is prohibited pursuant to s. 16(1) of the Act. This

[14] *Momentas Corporation (Re)*, 2006 ONSEC 15, (2006) 29 OSCB 7408 at para 118

prohibition is designed to preserve the confidentiality and integrity of Staff's investigations.[15]

[55] Mr. Handa admits that he telephoned an investor and told that investor that Staff was investigating Mr. Handa's conduct and that he was scheduled to meet with Staff. Mr. Handa also admits that he told the investor not to provide any information or documents and not to answer any telephone calls from Staff.

[56] The attempt by Mr. Handa to prevent an individual from cooperating with Staff during an investigation demonstrates a serious disregard for the Commission's investigative process. I find that Mr. Handa improperly communicated with a potential witness and disclosed information in contravention of s. 16(1) of the Act.

I. Did the respondents engage in conduct contrary to the public interest?

[57] Finally, I address Staff's allegations that the respondents' breaches of the specific provisions of the Act outlined above were contrary to the public interest. Staff seeks a finding to that effect.

[58] The phrase "conduct contrary to the public interest" is not contained anywhere in the Act. It is an expression based on the opening words of s. 127 of the Act, which authorizes the Commission to make certain orders if to do so would be in the public interest.

[59] Given my findings that Miner Edge and Mr. Handa breached the various provisions of the Act as outlined above, a finding that the same conduct was contrary to the public interest would be superfluous. I decline Staff's request.

IV. SANCTIONS

[60] I will now address the applicable sanctions against Miner Edge and Mr. Handa, considering the above findings.

A. Overview

[61] Staff seeks the following sanctions against Miner Edge and Mr. Handa as a result of their breaches of Ontario securities law:

a. an order that trading in any securities or derivatives by Miner Edge or by Mr. Handa cease permanently;

b. an order that Miner Edge and Mr. Handa be prohibited from acquiring any securities permanently;

c. an order that the exemptions contained in Ontario securities law do not apply to Miner Edge and Mr. Handa permanently;

d. an order permanently prohibiting Miner Edge and Mr. Handa from becoming or acting as a registrant or as a promoter;

e. an order that Miner Edge and Mr. Handa jointly and severally pay an administrative penalty in the amount of $500,000;

[15] *Katanga Mining Limited (Re)*, 2019 ONSEC 4, (2019) 42 OSCB 803 at para 14

f. an order that Miner Edge and Mr. Handa jointly and severally disgorge to the Commission the amount of $170,600; and

g. an order that Miner Edge and Mr. Handa jointly and severally pay costs in the amount of $200,000.

[62] Staff seeks the following additional sanctions against Mr. Handa alone:

a. an order that Mr. Handa resign any positions he holds as a director or officer of an issuer or registrant; and

b. an order permanently prohibiting Mr. Handa from becoming or acting as a director or officer of an issuer or registrant.

[63] The respondents acknowledge that the market participation bans sought by Staff as well as the disgorgement order are appropriate. The respondents submit that the administrative penalty and costs orders sought by Staff are excessive and propose a reduced administrative penalty of $150,000 and a costs order in the range of $75,000 to $100,000.

B. Legal Framework for Sanctions

[64] The Commission may impose sanctions pursuant to s. 127(1) of the Act where it finds that it is in the public interest to do so. The Commission must exercise its jurisdiction in a manner that is consistent with the Act's purposes, which includes protection of investors from unfair, improper and fraudulent practices, and the fostering of fair and efficient capital markets and confidence in the capital markets.[16]

[65] The sanctions available under s. 127(1) of the Act are protective and preventative and are intended to prevent future harm to investors and the capital markets.[17]

[66] 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 misconduct was isolated or recurrent, the size of the profit from the misconduct, whether there has been recognition of the seriousness of the misconduct, any mitigating factors including the respondent's remorse, and the likely effect that any sanction would have on the respondent as well as on others. Sanctions must be proportionate to the respondent's conduct in the circumstances.[18]

[67] The Commission has also held that a respondent's ability to pay, while not a predominate or determining factor, is relevant in the total mix of factors considered in determining the appropriate financial sanctions.[19]

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[16] Act, s 1.1

[17] *Mithras Management Ltd (Re),* (1990) 13 OSCB 1600 at para 43*; Bradon Technologies Ltd* at para 26

[18] *MCJC Holdings Inc (Re),* (2002), 25 OSCB 1133 at 1134-1135; *Cartaway Resources Corp (Re),* 2004 SCC 26 at para 60; *Money Gate Mortgage Investment Corporation (Re),* 2021 ONSEC 10, (2021) 44 OSCB 2983 at para 9; *Beltco Holdings Inc (Re),* (1998) 21 OSCB 1622 at 7746

[19] *Goldpoint Resources Corp (Re),* 2013 ONSEC 4, (2013) 36 OSCB 1464 (***Goldpoint Resources Corp***) at para 43; *Sabourin (Re),* 2010 ONSEC 10, (2010) 33 OSCB 5299 at para 60

C. Appropriate Sanctions

[68] The misconduct in this case was very serious. The respondents engaged in an extensive fraudulent scheme to solicit investments in a sham cryptocurrency mining operation. The respondents' actions were not isolated; rather they recurred over more than a one-year period, affected a significant number of individual investors, and raised significant funds.

[69] Fraud is one of the most egregious securities regulatory violations. It causes direct and immediate harm to investors, and it significantly undermines confidence in the capital markets.[20]

[70] The respondents also violated the registration and prospectus requirements, which are core elements of the securities regulatory regime designed to protect investors and ensure fair and efficient capital markets.

[71] By their misconduct, the respondents caused investors to suffer significant financial harm and compromised the integrity of Ontario's capital markets.

[72] An aggravating factor for Mr. Handa is his subsequent serious misconduct in making false and misleading statements to, and concealing information from, Staff and in breaching confidentiality obligations during Staff's investigation. This conduct undermined Staff's investigation and demonstrated disregard for the Commission, which ultimately undermines the securities regulatory regime and is abusive of the capital markets.

[73] There are also several mitigating factors in this case, including that:

a. the respondents made extensive factual admissions and admitted each of the alleged contraventions of Ontario securities law through the agreed statement of facts which substantially reduced the substance and length of this hearing;

b. at the hearing, Mr. Handa expressed remorse for the conduct of the respondents and apologized "unreservedly" for his misconduct;[21] and

c. the respondents had limited financial and capital market experience, have never been registered with the Commission and have not been the subject of any prior Commission proceedings.

[74] Overall, I must impose sanctions in this matter that will protect Ontario investors and the integrity of the capital markets by specifically deterring Miner Edge and Mr. Handa from engaging in similar or other misconduct in Ontario, and by acting as a general deterrent to other like-minded persons.

1. Market Participation Bans

[75] Staff seeks permanent market bans against the respondents and a permanent director and officer ban against Mr. Handa. The respondents acknowledge that permanent market bans and director and officer bans are appropriate.

[20] *Al-Tar Energy Corp* at para 214; *Black Panther Trading Corp* at para 48
[21] Exhibit 3, Affidavit of Rakesh Handa sworn November 11, 2021 at para 5

[76] Participation in the capital markets is a privilege, not a right.[22] A permanent ban is a severe sanction and accordingly I must be satisfied that such a ban is necessary as protective and preventative.

[77] I have considered the serious nature of the respondents' misconduct, including their recurring manipulative and fraudulent actions and their unauthorized diversion of investor funds causing significant financial harm to investors.

[78] I find that it is in the public interest to permanently bar the respondents from participating in the Ontario capital markets and to impose a permanent director and officer ban on Mr. Handa. In my view, permanent bans are necessary to protect investors, are proportionate to the respondents' misconduct and would act as a necessary deterrent to other like-minded persons.

[79] This determination for Mr. Handa is reinforced by his conduct in misleading Staff, attempting to interfere with a potential investor witness and breaching confidentiality during the Commission's investigation.

2. Disgorgement

[80] The Commission may order disgorgement of any amounts obtained because of non-compliance with Ontario securities law pursuant to s. 127(1) of the Act. 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.[23]

[81] Staff seeks an order for disgorgement of the amount of $170,600, being the amount obtained by the respondents as result of their fraudulent conduct and other breaches of Ontario securities law. The respondents acknowledge that a disgorgement order in this amount is appropriate.

[82] In my view, ordering disgorgement of the full amount obtained by the respondents as a result of their fraudulent conduct is necessary for the protection of investors, the promotion of confidence in the capital markets and to deter the respondents and others from engaging in such misconduct in the future. I find that it is in the public interest to require the respondents to disgorge, jointly and severally, the sum of $170,600.

3. Administrative Penalty

[83] As the Commission has previously held, the purpose of an administrative penalty is to deter the respondents from engaging in the same or similar conduct and to send a clear deterrent message to other market participants that such conduct will not be tolerated in Ontario's capital markets.[24]

[84] Staff seeks an order for an administrative penalty in the amount of $500,000 against the respondents, to be paid jointly and severally. Staff submits that this sum is appropriate due to the seriousness of the misconduct and the strong need for a clear deterrent message in the rapidly evolving cryptocurrency and crypto asset sector. Staff submits that the respondents' inability to pay is not a mitigating factor to reduce any monetary sanctions.

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[22] *Erikson v Ontario (Securities Commission),* (2003) 26 OSCB 1622 at para 55
[23] *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 at para 48
[24] *Limelight Entertainment Inc (Re)*, 2008 ONSEC 28, (2008) 31 OSCB 12030 at para 67

[85] The respondents submit that an administrative penalty in the amount requested by Staff is excessive and that an appropriate administrative penalty is $150,000. The respondents submit that the total amount of the financial sanctions sought by Staff are disproportionate as compared to other Commission decisions, and that the following factors support a lower administrative penalty:

a. the activities of the respondents were relatively narrow in duration and scope;

b. Mr. Handa had limited knowledge and experience in the financial market and has never been a registrant;

c. Mr. Handa expressed remorse for his actions and made good faith efforts to settle this proceeding in its entirety but was unable to secure the necessary funds to pay the financial sanctions sought by Staff; and

d. Mr. Handa is financially unable to pay the higher amount.

[86] For context regarding administrative penalties imposed by the Commission, I have considered the prior Commission decisions relied on by Staff and the respondents for the range of administrative penalties that have been ordered by the Commission for similar misconduct.

[87] An administrative penalty of $500,000 appears to be at the high end of the range compared to the prior Commission decisions provided by Staff and the respondents. I note that in the following two recent decisions involving fraud of a similar nature, extent and scope, the Commission ordered administrative penalties of the same magnitude:

a. *Natural Bee Works Apiaries Inc (Re)* – Approximately $300,000 was raised over nine months from 69 investors. Most of the investors' fund were diverted to the personal use of the individual respondents or uses that were not related to the business described to the investors. All investors lost their funds. The Commission ordered that the corporate respondent and one of its principals be jointly liable for an administrative penalty of $500,000;[25]

b. *Black Panther Trading Corp* – Approximately $425,000 was raised from 16 investors over almost four years. The investors' funds were misappropriated and mostly used to pay other investors or for the personal use of one of the respondents. Most of the investors' funds were lost. The Commission ordered that the respondents be jointly liable for an administrative penalty of $300,000.[26]

[88] Two prior Commission decisions relied on by the respondents involved lower administrative penalties in the range of $150,000 to $300,000 against individual respondents for fraudulent schemes which raised funds of more than $1 million. In one decision, *Goldpoint Resources Corp*, the Commission considered the remorse expressed by the individual respondent as a mitigating factor but ultimately ordered the $300,000 administrative penalty requested by Staff.[27] In *2196768 Ontario Ltd (Re)*[28], Staff requested administrative penalties in the total

[25] *Natural Bee Works Apiaries Inc (Re),* 2019 ONSEC 31, (2019) 42 OSCB 7961 at paras 2, 37 and 40
[26] *Black Panther Trading Corp* at paras 1, 47 and 97
[27] *Goldpoint Resources Corp* at paras 56 and 80
[28] *2196768 Ontario Ltd (Re),* 2015 ONSEC 9, (2015) 38 OSCB 2374 (***Ontario Ltd***) at paras 55 and 59

amount of $600,000 for two respondents and the Commission ordered total administrative penalties of $400,000 ($250,000 against one respondent and $150,000 against another respondent). The Commission considered cases with administrative penalties ranging from $100,000 to $500,000, some of which involved schemes that raised more funds and others with schemes that involved more investors.[29]

[89] There is no formulaic approach to determining the quantum of an administrative penalty. Prior decisions provide some context to the consideration of proportionality, however, the sanctions in each proceeding must be determined based on the specific factual context and circumstances.

[90] In the circumstances of this matter, I am of the view that a significant administrative penalty against the respondents is necessary to achieve the goals of specific and general deterrence.

[91] The respondents fraudulent misconduct involved numerous serious failures to comply with Ontario securities law over a period of more than one-year which deprived 90 investors of all their invested funds.

[92] Mr. Handa, the directing mind of Miner Edge, orchestrated this fraudulent investment scheme and was responsible for the dissemination of false and misleading information, both in his direct interactions with investors and through Miner Edge's website and use of social media platforms. Mr. Handa personally benefited from the misappropriation of almost all of the investor funds and misled Staff and interfered with the Commission's investigation.

[93] Finally, the respondents exploited the vulnerability of at least two investors that were clients of Mr. Handa's immigration consulting business and falsely promised one of these investors that his Miner Edge investment would form part of his immigration application, which Mr. Handa promised to submit but did not.

[94] I have considered the remorse expressed by Mr. Handa at the hearing for his conduct and the respondents' admissions by way of the agreed statement of facts as mitigating factors.

[95] In my view these actions demonstrate a recognition by the respondents of the seriousness of their misconduct. However, the mitigating impact of these actions is tempered by the respondents' failure to make any efforts to reimburse funds to investors, wholly or partially, and the conduct of Mr. Handa which interfered with and undermined the Commission's investigation.

[96] Finally, I have also considered the respondents ability to pay as a factor. Mr. Handa submits that he has limited income and his only asset is his family home (which has a value of $1.8 million and an outstanding mortgage of $950,000). Mr. Handa states that he has been unable to re-finance or increase the existing mortgage on his home without significantly increasing his monthly expenses which would lead to his personal bankruptcy. Mr. Handa has made no efforts to sell the family home.

[97] While this evidence demonstrates that Mr. Handa currently has limited income and has been unable to obtain additional financing of the almost $800,000 of equity in the family home, it falls short of establishing an inability to pay.

[29] *Ontario Ltd* at para 56

[98] The administrative penalty should reflect the sanctioning factors even where the Commission may not be able to currently recover the amount ordered. The order will remain in place and the respondents may have the ability to pay in the future.

[99] Considering all of the above, I find that an administrative penalty of $500,000 against the respondents, to be paid jointly and severally, is appropriate and proportionate to the respondents' conduct.

V. COSTS

[100] I turn now to consider Staff's request that the respondents pay some of the costs associated with this matter.

[101] Given my finding that the respondents did not comply with Ontario securities law, I have discretion to order that the respondents pay the costs of the investigation and the hearing in this matter.[30] Such an order is not a sanction; instead, it allows the Commission to recover some of the costs associated with investigations and hearings.

[102] Staff submitted evidence showing that the total costs of the investigation and hearing was $353,826.20.[31] That sum includes Staff time of $332,262.50 and disbursements for cryptocurrency intelligence and forensics services, an interpreter and court reporter of $21,563.70. The amount of Staff time is based on hourly rates previously approved by the Commission.

[103] Staff seeks total costs of $200,000 from the respondents which includes Staff time of $178,436.30 and disbursements of $21,563.70. Overall Staff's claimed amount represents a discount of approximately 43% on Staff time.

[104] Staff limited its request regarding time to the work of only two individuals, one investigator and one litigator. Staff excluded the time of all other investigators and litigators involved and also excluded the time for the work of all law clerks, articling students, assistant investigators and any other enforcement staff.

[105] Staff submits that the seriousness of the respondents' misconduct necessitated the costs associated with the investigation and the proceeding. Staff also submits that Mr. Handa's conduct in misleading Staff and concealing information increased the costs of the investigation phase. Staff did not provide any information or evidence as to the quantum of such increases in costs.

[106] The respondents acknowledge that their misconduct necessitated the investigation and hearing in this matter but submit that a costs award between $75,000 and $100,000 is appropriate given the respondents' efforts to settle this proceeding and the respondents' admissions by way of the agreed statement of facts which eliminated the need for a contested merits hearing.

[107] I acknowledge the significant reduction that Staff has applied to its costs of the investigation and proceeding. As with an administrative penalty, determining the amount of a costs award is not formulaic. I must adopt a balanced approach that considers all the applicable factors.

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[30] Act, s 127(1)
[31] Exhibit 2, Affidavit of Rita Pascuzzi sworn October 29, 2021 at 5

[108] In my view a costs order in the amount requested by Staff would be excessive in the circumstances of this case. The respondents admitted all the alleged contraventions of Ontario securities law and the related necessary facts to support my findings of these contraventions. The respondents acknowledged their misconduct and substantially reduced the length of this hearing to less than one full hearing day.

[109] I find that it is appropriate to order that the respondents, jointly and severally, pay costs of $100,000 to the Commission.

VI. CONCLUSION

[110] For the above reasons, I find that the respondents:

a. engaged in the business of trading securities without registration, and without any applicable exemptions from the registration requirement, contrary to subsection 25(1) of the Act;

b. distributed securities without a prospectus, and without any applicable exemptions from the prospectus requirement, contrary to subsection 53(1) of the Act;

c. perpetrated a fraud on investors contrary to subsection 126.1(1)(b) of the Act; and

d. made misleading statements to investors contrary to subsection 44(2) of the Act.

[111] I also find that Mr. Handa:

a. authorized, permitted or acquiesced in Miner Edge's breaches of the Act, contrary to section 129.2 of the Act;

b. made false and misleading statements to Staff contrary to subsection 122(1)(a) of the Act; and

c. improperly communicated with a potential witness and disclosed confidential information contrary to subsection 16(1) of the Act.

[112] As a result of the above, I shall issue an order that provides that:

a. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act:

   i. trading in any securities or derivatives by Miner Edge and Mr. Handa shall cease permanently; and

   ii. the acquisition of any securities by Miner Edge and Mr. Handa shall cease permanently;

b. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Miner Edge and Mr. Handa permanently;

c. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Handa shall resign any positions that he holds as a director or officer of an issuer or registrant;

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

e. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Miner Edge and Mr. Handa are prohibited permanently from becoming or acting as a registrant or as a promoter;

f. pursuant to paragraph 9 of subsection 127(1) of the Act, Miner Edge and Mr. Handa, jointly and severally, shall pay an administrative penalty in the amount of $500,000, which amount shall be designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b) of the Act;

g. pursuant to paragraph 10 of subsection 127(1) of the Act, Miner Edge and Mr. Handa, jointly and severally, shall disgorge to the Commission $170,600, which amount shall be designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b) of the Act; and

h. pursuant to section 127.1 of the Act, Miner Edge and Mr. Handa, jointly and severally, shall pay $100,000 for the costs of the investigation and hearing.

Dated at Toronto this 22nd day of December, 2021.

"Wendy Berman"

Wendy Berman