



Capital
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Tribunal

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Citation: *Cartu (Re)*, 2022 ONCMT 21

Date: 2022-07-25

File No. 2020-14

IN THE MATTER OF
JONATHAN CARTU, DAVID CARTU AND JOSHUA CARTU

REASONS AND DECISION

(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators: M. Cecilia Williams (chair of the panel)
Russell Juriansz
Sandra Blake

Hearing: By videoconference, May 13, 2022

Appearances: Rikin Morzaria For Staff of the Ontario Securities
Commission

No one appearing for Jonathan Cartu or Joshua Cartu

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REASONS AND DECISION

1. DECISION AND OVERVIEW

- [1] This is a sanctions and costs hearing. Jonathan Cartu and Joshua Cartu were properly served but did not participate in the hearing.
- [2] In the merits decision, dated April 7, 2022 (the **Merits Decision**),¹ the panel found that Jonathan Cartu and Joshua Cartu operated an interconnected global business trading in binary options. Their operation included binary options trading platforms, call centres and payment processing companies. The panel also found that Jonathan Cartu used deceptive practices by using an alias, encouraging others to use aliases, and hiding the true location of the business from investors.
- [3] The panel concluded that Jonathan Cartu and Joshua Cartu had breached s. 25(1) (registration) and s. 53(1) (prospectus) requirements of the *Securities Act* (the **Act**)². It also concluded that Jonathan Cartu engaged the animating principles of the *Act* by using deceptive practices that undermined the capital markets and the public's confidence in those markets.
- [4] This serious misconduct warrants the following orders in the public interest, which are set out in greater detail in paragraph [41] below:
- a. Jonathan Cartu be subject to a market participation ban of 15 years, an administrative penalty of \$1,000,000, and costs of \$300,000;
 - b. Joshua Cartu be subject to a market participation ban of 10 years, an administrative penalty of \$500,000, and costs of \$100,000; and
 - c. Jonathan Cartu and Joshua Cartu jointly and severally disgorge \$1,407,278.63.

¹ *Cartu (Re)*, 2022 ONSEC 4 (**Merits Decision**)

² RSO 1990, c S.5

2. SANCTIONS ANALYSIS

2.1 What is the legal framework for sanctions?

- [5] The Capital Markets Tribunal may impose sanctions pursuant to s.127(1) of the *Act* where it finds it is in the public interest to do so. The Tribunal must exercise its jurisdiction in a manner that is consistent with the *Act*'s purposes. Those purposes include protecting investors from unfair, improper and fraudulent practices and fostering fair, efficient and competitive markets and confidence in the capital markets.³
- [6] Sanctions are preventive and protective and are intended to prevent future harm to investors and the capital markets.⁴ In restraining future conduct that is likely to be prejudicial to the public interest, the Tribunal, of necessity, must look to past conduct as a guide to future conduct.⁵
- [7] The Tribunal considers a non-exhaustive list of factors in imposing sanctions. The relevant factors in this case are the seriousness of the misconduct, whether the activity was isolated or recurrent, whether the respondents recognized the seriousness of the misconduct, and the amounts obtained and the profit made from the misconduct.⁶
- [8] It is appropriate for the Tribunal, when making an order in the public interest that is both protective and preventive, to consider specific and general deterrence. It is important that respondents, and like-minded individuals engaging in such conduct, should be deterred from doing so in the future by imposing appropriate sanctions, which reflect the harm to investors;⁷ although the weight to be given to general deterrence will vary at the discretion of the Tribunal depending on the circumstances of each case.⁸

³ *Act*, s 1.1

⁴ *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para 36

⁵ *Mithras Management Ltd (Re)* (1990), 13 OSCB 1600 at 1610–1611

⁶ *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746; *Erikson v. Ontario (Securities Commission)*, 2003 CanLII 2451 (Div Ct) at para 58; *MCJC Holdings Inc (Re)*, (2002) 25 OSCB 1133 at 1135

⁷ *Majestic Supply Co. Inc. et al. (Re)*, 2013 ONSEC 41 (***Majestic***) at para 91

⁸ *Cartaway Resources Corp (Re)*, 2004 SCC 26 at paras 60, 64

[9] We apply the sanctioning factors below.

2.2 Application of the various factors

2.2.1 Was the misconduct serious?

[10] The panel in the Merits Hearing found that Jonathan Cartu and Joshua Cartu traded without being registered and distributed securities without a prospectus. The registration and prospectus requirements of the *Act* are cornerstones of Ontario's securities law.

[11] The registration requirement is designed to ensure that those who sell or promote securities are proficient, solvent and act with integrity. Registration ensures that the public deals with individuals who meet the necessary proficiency requirements and who engage in honest and responsible conduct.⁹ Unregistered trading is contrary to these necessary legal protections and undermines investor protection and the integrity of the capital markets.¹⁰

[12] The prospectus requirement seeks to ensure that investors are properly equipped to assess the risks of investments and to make informed business decisions.¹¹

[13] We find that Jonathan Cartu's and Joshua Cartu's misconduct was serious. By failing to comply with these foundational requirements of Ontario securities law they deprived investors of the:

- a. ability to properly assess the risks associated with a high-risk investment in binary options, and
- b. protection of trading with individuals who had met Ontario's standards of proficiency, solvency and integrity.

[14] As found on the evidence before us, their serious misconduct resulted in 716 Ontario investors investing at least \$1,407,278 in binary options, some of whom lost some or all of their investment. Investor M lost all of his approximately

⁹ *MRS Sciences Inc. (Re)*, 2014 ONSC 14 at para 88

¹⁰ *Sheehan (Re)*, 2021 ONSC 26 at para 24

¹¹ Merits Decision at para 93

US\$628,000 investment, Investor C lost the \$750 he invested, and Investor S lost the \$3,000 he invested.

- [15] Staff asks that we consider Jonathan Cartu's use of deceptive practices as an aggravating factor that increases the seriousness of the statutory misconduct. The panel in the Merits Hearing found that Jonathan Cartu engaged in deceptive practices by using an alias and instructing others within the Cartu's integrated binary options' operation to use aliases to conceal and misstate the true location of their business operations.¹²
- [16] While the deceptive practices engage an animating principle of the *Act*,¹³ they do not attract an independent administrative penalty. Staff submits that we should follow the approach taken by the panel in *Majestic*. The panel in *Majestic* noted that the seriousness of a respondent's conduct was aggravated by deceptive practices contrary to the public interest.¹⁴
- [17] We agree. Misleading investors about the identity of the individuals and the location of the business they are dealing with denies investors the ability to properly understand and evaluate the risks of their investment. It undermines the capital markets and the public's trust in those markets and aggravates the seriousness of Jonathan's misconduct.

2.2.2 Was the activity isolated or recurrent and what was the level of activity?

- [18] We conclude that the level of the Respondents' misconduct was significant and recurrent.
- [19] Jonathan Cartu and Joshua Cartu operated their interconnected binary options business for approximately four years, from July 2013 to April 2017.¹⁵ During that period, they actively solicited and welcomed Ontario investors.¹⁶ Their Israeli-based sales team operated from 3:00 pm to 11:00 pm local time. The express purpose of this work schedule was to target North American and

¹² Merits Decision at paras 101–104

¹³ Merits Decision at para 108

¹⁴ *Majestic* at para 83

¹⁵ Merits Decision at para 83

¹⁶ Merits Decision at para 84

European clients.¹⁷ One Ontario investor was expressly told that the company could take investors from anywhere in Canada without restrictions. He was also told that the business was located in Canada, with many locations around the world.¹⁸

- [20] A total of 716 Ontario investors invested at least \$1,407,278.63 in binary options through the Cartus' business operation. The amounts from Ontario investors were part of the approximate \$233,000,000 generated by the Respondent's global operations during their four years in business.

2.2.3 Have the Respondents recognized the seriousness of their misconduct?

- [21] Staff submits and we agree that Jonathan Cartu and Joshua Cartu have failed to acknowledge the seriousness of their misconduct. Despite receiving notice of each step of this proceeding and of all orders issued throughout, and having had the opportunity to make written submissions, the Respondents have chosen not to participate. They have given no indication that they recognize the seriousness of their misconduct or its impact on their investors or Ontario's capital markets.

2.2.4 What is the extent of the "amounts obtained" or the profit made?

- [22] Previous panels have established that the legal question for determining the "amount obtained" for the purpose of a disgorgement order under paragraph 10 of s. 127(1) of the *Act* is not what profit was made but what amounts the respondents obtained through their illegal activity.¹⁹ We address Staff's request for disgorgement in more detail below.

2.2.5 Will the requested sanctions achieve specific and general deterrence?

- [23] Staff submits that specific deterrence is necessary because of the seriousness and extent of the Respondents' misconduct. Staff further submits that specific deterrence will be achieved by barring Jonathan Cartu and Joshua Cartu for a lengthy period from Ontario's capital markets.

¹⁷ Merits Decision at para 58

¹⁸ Merits Decision at para 103

¹⁹ *Limelight Entertainment Inc. (Re)*, 2008 ONSEC 28 at para 49; *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18 at paras 48-51; *Phillips (Re)*, 2015 ONSEC 36 at paras 18-19

- [24] Staff submits that the requested sanctions will also achieve general deterrence by sending a firm message to the market, especially the emerging technology markets, that risky, unregistered trading operations that target Ontario investors will not be tolerated, even if those operations are located outside of Ontario.
- [25] Staff is seeking an order:
- a. for a 15-year market participation ban for Jonathan Cartu;
 - b. for a 10-year market participation ban for Joshua Cartu;
 - c. that both Respondents immediately resign all current director or officer positions they may hold;
 - d. for disgorgement of \$1,407,278.63 on a joint and several basis;
 - e. that Jonathan Cartu pay an administrative penalty of \$1,000,000; and
 - f. that Joshua Cartu pay an administrative penalty of \$500,000.

2.3 What are the appropriate sanctions?

- [26] We conclude that the requested sanctions are proportionate to the Respondents' misconduct and to previous cases involving similar conduct. Participation in Ontario's capital markets is a privilege not a right. Jonathan Cartu's and Joshua Cartu's serious misconduct warrants a significant restriction on their ability to participate in our markets and administrative penalties that reflect the scope of the misconduct and act as a deterrent for these Respondents and for like-minded individuals. While in our view permanent bans may have been reasonable in these circumstances, Staff sought bans of 15 years for Jonathan Cartu and 10 years for Joshua Cartu, which we have accepted.

2.3.2 Administrative penalties

- [27] The Respondent's brother, David Cartu, also participated in their global binary options business but agreed to a settlement of the allegations in this matter against him. In the settlement agreement, David Cartu agreed to a 7-year market participation ban and a \$300,000 administrative penalty. A number of mitigating factors were considered in determining that the agreed-upon sanctions against David Cartu were reasonable and in the public interest. They included that:

- a. he was not the principal actor in the business;
- b. he did not induce investors to enter into the trades;
- c. there was no evidence that he received amounts from, had contact with, initiated, or solicited investors to enter into trades;
- d. he assisted a liquidator of one of the payment processing entities in recovering funds from merchants for investors; and
- e. he agreed to settle at an early stage of the proceeding, thereby avoiding the use of significant Staff and Tribunal resources for a full merits hearing.

[28] In *Doulis (Re)*²⁰ the respondents were found to have engaged in the business of advising about securities without being registered and to have made misleading or untrue statements to Staff. Their activity spanned approximately seven years, involving 12 investors who traded between \$15 million to \$17 million, and generated approximately \$37,000 and US\$8,000 in fees. The two respondents were ordered to pay administrative penalties of \$200,000 and \$100,000, respectively.

[29] In *Natural Bee Works Apiaries Inc. (Re)*²¹ the individual and corporate respondents raised \$300,000 from 70 investors over the course of one year, and used some of the proceeds for personal purposes. The panel imposed a permanent market participation ban and an administrative penalty of \$500,000, payable on a joint and several basis.

[30] In *Black Panther Trading Corp. (Re)*²² the individual and corporate respondents raised approximately \$425,000 from 16 investors without being registered. They promised returns to investors, used some of the proceeds for personal purposes or to pay other investors, and misled Staff about how much money they had raised and how much money they held. The panel imposed permanent market participation bans on both respondents and an administrative penalty of \$300,000, to be paid on a joint and several basis.

²⁰ 2014 ONSEC 40 (*Doulis*)

²¹ 2019 ONSEC 31 (*Natural Bee*)

²² 2017 ONSEC 8 (*Black Panther*)

- [31] Unlike David Cartu, there are no mitigating factors to consider with respect to Jonathan Cartu and Joshua Cartu. More substantial sanctions for Jonathan and Joshua are appropriate to reflect their more significant involvement in the interconnected global operation.
- [32] In all the cases Staff is relying on, the administrative penalties imposed were commensurate with or in excess of the amounts the respondents in those cases had obtained through their misconduct. Administrative penalties of \$1,000,000 for Jonathan Cartu and \$500,000 for Joshua Cartu are proportionate to the approximate \$1.4 million invested through their global business operation by Ontario residents.
- [33] It is also appropriate that the administrative penalty imposed on Jonathan Cartu significantly exceed that imposed on Joshua Cartu. It is clear from the Merits Decision that Jonathan had a more active role in the development and operation of the business. In addition, as we indicated above, we consider Jonathan's use of deceptive practices to be an aggravating factor. The higher administrative penalty imposed on him reflects this consideration.

2.3.3 Disgorgement

- [34] Staff seeks disgorgement, on a joint and several basis, of the \$1,407,278.63 obtained by the Respondents in Ontario. In our view, a disgorgement is appropriate, as the ascertainable amount was obtained as a result of the Respondents' misconduct. Their misconduct was serious and resulted in harm to investors. A disgorgement order will also contribute to the deterrent effect of this decision on the Respondents and on any like-minded individuals.
- [35] A disgorgement order is also consistent with the case law Staff submitted. In each of those cases, the panels ordered disgorgement of amounts obtained as a result of the respondents' misconduct.²³

3. COSTS ANALYSIS

- [36] The Tribunal has discretion to order a person or company to pay the costs of an investigation or a hearing, if the Tribunal is satisfied that the person or company

²³ *Doulis* at paras 51–52; *Natural Bee* at paras 37, 40; *Black Panther* at para 97

has not complied with Ontario securities law or has not acted in the public interest.²⁴ A costs order is not a sanction. Rather it is a means to have those who contravene Ontario securities law contribute to the costs of an investigation or hearing.

- [37] Staff is seeking \$400,000 in costs. This represents a reduction from the fees for Staff time totalling \$574,425.98 and disbursements of \$16,827.23 set out in the Bill of Costs filed by Staff. The Bill of Costs reflects only the time of one investigation counsel and one litigation counsel during each of the investigation and litigation phases of this matter. Excluded from the Bill of Costs is any time spent by law clerks, assistants, members of the E-Discovery and Analytics unit, and the time of any person who recorded 35 hours or fewer on this matter. Staff time is billed at hourly rates previously approved by the Tribunal.
- [38] The actual costs sought have been further reduced to reflect the fact that David Cartu contributed \$15,000 towards costs and to account for the possible time dedicated solely to investigating David Cartu.
- [39] We conclude that the costs sought by Staff are appropriate in this case. The Respondents' misconduct was directly responsible for the investigation and hearing in this matter. The investigation was complicated by the global nature of the Respondents' business operation and the deceptive practices used in that operation. The breaches of Ontario securities law at the centre of this matter are serious and warrant action to protect the Ontario investors.
- [40] We agree with Staff's request that the costs awarded should be allocated 75% (\$300,000) to Jonathan Cartu and 25% (\$100,000) to Joshua Cartu. Jonathan Cartu was the more central player in the development and operation of the business and engaged in deceptive practices in the operation of the business.

4. CONCLUSION

- [41] We, therefore, issue an order:
- a. with respect to Jonathan Cartu, that:

²⁴ Act, s 127.1

- i. he shall cease trading in any securities or derivatives for a period of 15 years, pursuant to paragraph 2 of subsection 127(1) of the *Act*;
 - ii. he shall cease acquiring any securities for a period of 15 years, pursuant to paragraph 2.1 of subsection 127(1) of the *Act*;
 - iii. any exemptions contained in Ontario securities law shall not apply to him for a period of 15 years, pursuant to paragraph 3 of subsection 127(1) of the *Act*;
 - iv. he shall resign any positions that he holds as a director or officer of an issuer or registrant, pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the *Act*;
 - v. he shall be prohibited from acting as a director or officer of an issuer or registrant for a period of 15 years, pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the *Act*;
 - vi. he shall be prohibited from becoming or acting as a registrant or as a promoter for a period of 15 years, pursuant to paragraph 8.5 of subsection 127(1) of the *Act*;
 - vii. he shall pay an administrative penalty in the amount of \$1,000,000 to the Ontario Securities Commission, pursuant to paragraph 9 of subsection 127(1) of the *Act*; and
 - viii. he shall pay \$300,000 for costs of the investigation and hearing, pursuant to s. 127.1 of the *Act*;
- b. with respect to Joshua Cartu, that:
- i. he shall cease trading in any securities or derivatives for a period of 10 years, pursuant to paragraph 2 of subsection 127(1) of the *Act*;
 - ii. he shall cease acquiring any securities for a period of 10 years, pursuant to paragraph 2.1 of subsection 127(1) of the *Act*;
 - iii. any exemptions contained in Ontario securities law shall not apply to him for a period of 10 years, pursuant to paragraph 3 of subsection 127(1) of the *Act*;

- iv. he shall resign any positions that he holds as a director or officer of an issuer or registrant, pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the *Act*;
 - v. he shall be prohibited from acting as a director or officer of an issuer or registrant for a period of 10 years, pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the *Act*; and
 - vi. he shall be prohibited from becoming or acting as a registrant or as a promoter for a period of 10 years, pursuant to paragraph 8.5 of subsection 127(1) of the *Act*;
 - vii. he shall pay an administrative penalty in the amount of \$500,000 to the Commission, pursuant to paragraph 9 of subsection 127(1) of the *Act*; and
 - viii. he shall pay \$100,000 for the costs of the investigation and hearing, pursuant to s.127.1 of the *Act*; and
- c. Jonathan Cartu and Joshua Cartu jointly and severally disgorge to the Commission the amount of \$1,407,278.63, pursuant to paragraph 10 of subsection 127(1) of the *Act*.

Dated at Toronto this 25th day of July, 2022

"M. Cecilia Williams"

M. Cecilia Williams

"Russell Juriansz"

Russell Juriansz

"Sandra Blake"

Sandra Blake