Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue Queen ouest, Toronto ON M5H 3S8

Citation: *Stinson (Re),* 2023 ONCMT 50
Date: 2023-12-15
File No. 2022-3

IN THE MATTER OF
HARRY STINSON, BUFFALO GRAND HOTEL INC., STINSON HOSPITALITY MANAGEMENT INC., STINSON HOSPITALITY CORP., RESTORATION FUNDING CORPORATION, BUFFALO CENTRAL LLC, AND STEPHEN KELLEY

REASONS AND DECISION ON SANCTIONS AND COSTS

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

Adjudicators:	Cathy Singer (chair of the panel) Sandra Blake Geoffrey D. Creighton	
Hearing:	By videoconference, September 19, 2023	
Appearances:	Hansen Wong	For Staff of the Ontario Securities Commission
	Macdonald Allen	For Harry Stinson, Buffalo Grand Hotel Inc., Stinson Hospitality Management Inc., Stinson Hospitality Corp., Restoration Funding Corporation, and Buffalo Central LLC

TABLE OF CONTENTS

REASONS AND DECISION ON SANCTIONS AND COSTS

1. OVERVIEW

[1] Between November 2016 and March 2020, the respondents raised approximately $13.177 million[1] and US$364,000 from the sale of securities related to the Buffalo Grand Hotel.

[2] In a decision on the merits,[2] the Tribunal found:

a. Harry Stinson, Buffalo Grand Hotel Inc. (**Hotel Inc**.), Stinson Hospitality Management Inc. (**Management Inc.**), and Buffalo Central LLC (**Buffalo Central**) illegally distributed securities contrary to s. 53(1) of the *Securities Act*[3] (***Act***) by not filing a preliminary prospectus and a prospectus;

b. Stinson and Stinson Hospitality Corp. (**Hospitality Corp.**) breached a temporary cease trade order and therefore breached Ontario securities law; and

c. the respondents (collectively, the five corporate entities and Stinson, but not Stephen Kelley, who previously reached a settlement with the Ontario Securities Commission[4]) engaged the Tribunal's public interest jurisdiction by failing to segregate investor funds, failing to maintain accurate records of funds received from investors, and failing to properly record the use of investors' funds.

[3] Staff of the Commission requests an order that the respondents:

a. be removed permanently from Ontario's capital markets, as more particularly described below;

b. pay, jointly and severally, an administrative penalty in the amount of $1,000,000;

c. disgorge, jointly and severally, $13.177 million and US$364,000; and

---

[1] All monetary amounts in these reasons refer to Canadian dollars, except where otherwise indicated.
[2] *Stinson (Re)*, 2023 ONCMT 26 (**Merits Decision**)
[3] RSO 1990 c S.5
[4] *Stinson (Re)*, 2023 ONCMT 13 (***Kelley Settlement Decision***)

d. pay, jointly and severally, costs of the investigation and hearing in the amount of $316,000.

[4] For the reasons set out below, we conclude that it is in the public interest to order that:

a. Stinson be removed permanently from Ontario's capital markets, as more particularly described below, with a carve-out permitting him to remain as an officer and director of his registered real estate brokerage under the *Real Estate and Business Brokers Act, 2002*[5] (***REBBA***), subject to conditions;

b. Hotel Inc., Management Inc., Hospitality Corp., Buffalo Central and Restoration Funding Corporation (**Restoration Corp.**) be removed permanently from Ontario's capital markets, as more particularly described below;

c. Stinson, Hotel Inc., Management Inc., Hospitality Corp. and Buffalo Central, jointly and severally:

i. pay an administrative penalty in the amount of $600,000; and

ii. disgorge $13.177 million and US$364,000; and

d. the respondents, jointly and severally, pay costs of the investigation and hearing in the amount of $166,000.

2. LEGAL FRAMEWORK FOR SANCTIONS

[5] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it finds that it would be in the public interest to do so. The Tribunal must exercise this jurisdiction in a manner consistent with the *Act*'s purposes, which include the protection of investors from unfair, improper or fraudulent practices, and the fostering of fair and efficient capital markets.

[5] SO 2002, c 30, Schedule C

[6] The sanctions listed in s. 127(1) of the *Act* are protective and preventative, and are intended to be exercised to prevent future harm to Ontario's capital markets.[6]

[7] Sanctions must be proportionate to a respondent's conduct in the circumstances of the case. Fashioning the appropriate sanctions is a highly contextual exercise that is dependent on the facts and findings in the particular case.[7]

[8] In previous decisions, the Tribunal has identified a non-exhaustive list of factors applicable to the determination of appropriate sanctions, which include:

a. the seriousness of the misconduct;

b. the respondent's level of activity in the marketplace or, in other words, the "size" of the contravention;

c. the respondent's experience in the marketplace;

d. whether the misconduct was isolated or recurrent;

e. whether the respondent benefitted or profited from the misconduct;

f. any mitigating factors; and

g. the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence").[8]

3. FACTORS RELEVANT TO SANCTIONS

3.1 Seriousness of the misconduct

[9] In considering the seriousness of the misconduct, we first examine the breach of the prospectus requirement, followed by the breach of the temporary cease trade order and the aggravating factors in this case. The respondents assert that their conduct was at most negligent. We disagree. We conclude that the respondents' misconduct is more serious than negligent, for the reasons discussed below.

---

[6] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

[7] *Bradon Technologies Ltd. (Re),* 2016 ONSEC 19 at paras 28, 47, citing *Cartaway Resources Corp (Re)*, 2004 SCC 26 (***Cartaway***) at para 60

[8] *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746

3.1.1 Breach of the prospectus requirement

[10] The prospectus requirement is a cornerstone of Ontario securities law. It seeks to ensure that investors are properly equipped to assess the risks of an investment and to make an informed investment decision.[9]

[11] Staff submits that investors were unable to properly assess the risk of investing because the respondents failed to comply with the prospectus requirement. Staff further submits that Stinson's history ought to have made him aware of the need to seek professional advice about the application of Ontario securities law. Stinson's history includes a 2006 settlement with the Commission relating to a proposed hotel condominium project in which Stinson acknowledged that he had breached the registration and prospectus requirements of the *Act* in connection with that project.[10] Stinson's history also includes his more recent breaches of the temporary cease-trade order imposed by the Tribunal.

[12] Staff relies on *Sabourin (Re)*[11] and *Borealis International Inc. (Re)*[12]*.* The misconduct in each case included breaches of the prospectus requirement and the dealer registration requirement. Staff focuses on a common individual respondent to both cases as a comparison to Stinson. Staff submits that the individual respondent in *Sabourin* had been involved in raising approximately $4.4 million in breach of the *Act*. Staff further submits that the individual respondent was soon after involved in *Borealis* in raising approximately $610,000 from investors in breach of the *Act* at the same time as he was subject to a cease trade order while the decision and reasons in *Sabourin* were pending.

[13] Staff submits that in *Borealis* the individual respondent was ordered to pay an administrative penalty of $300,000, which represented nearly 50% of the sales in which he was involved. Staff further submits that his conduct was of sufficient concern to warrant permanent director and officer bans with a limited carve-out on the trading ban.

---

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

[10] Exhibit 1, Agreed Statement of Facts dated August 2023, 2023 at para 7 and attached Settlement Agreement, dated December 15, 2006

[11] 2010 ONSEC 10 (***Sabourin***)

[12] 2011 ONSEC 11 (***Borealis***)

[14] The respondents submit that *Sabourin* and *Borealis* are distinguishable from the facts of this case on a number of grounds. The respondents focus on all of the respondents in *Sabourin* and *Borealis*, and not just the individual respondent, and submit that the total amount raised by all of the respondents in breach of the *Act* was over $16 million and $33 million, respectively,[13] a significantly larger scale than in this case. The respondents further submit that, unlike in this case, the individual respondent common to both of those cases profited from and earned commission on the money raised.[14] The respondents further submit that some of the respondents in *Borealis* engaged in conduct in breach of the *Act* while under a recent cease trade order at the time pending the *Sabourin* decision, and that this more recent history of securities law violations contributed to the serious penalties issued.[15]

[15] The respondents also point to the finding in the merits decision that the respondents did not have specific intent to harm investors, and the purpose of the distribution was to fund a bona fide underlying business – the hotel project. The respondents submit that a lack of dishonest motive should serve to distinguish the respondents' misconduct from the cases cited by Staff. They further submit that their conduct was, at most, negligent and therefore not as serious as it otherwise might have been.

[16] We do not agree with the respondents' submission that their conduct was, at most, negligent, and therefore should be distinguished from *Sabourin* and *Borealis*. While we agree that the conduct of the respondents was not as serious as that of the respondents in *Sabourin* and *Borealis*, we agree with Staff that Stinson (and, by extension, the corporate respondents) simply should have known better, given Stinson's previous settlement with the Commission involving a breach of the prospectus requirements. While ignorance of the law is not a defence to a breach of the prospectus requirements, in this case Stinson was certainly aware of the prospectus requirements. As a result, the breach of the prospectus requirements by Stinson and the corporate respondents was the

[13] *Borealis* at para 9; *Sabourin* at para 70
[14] *Borealis* at para 22; *Sabourin* at para 81
[15] *Sabourin* at para 54

result of either a clear disregard for, or a reckless indifference to, the prospectus requirements under the *Act.*

3.1.2 Breach of a temporary cease trade order

[17] While subject to a temporary cease trade order, Hospitality Corp. issued approximately 50,944 shares in Hospitality Corp. to nine individuals. The issuance of shares was in lieu of interest payments owing under the individual investors' agreements. Stinson signed the share certificates in his capacity as President of Hospitality Corp.[16] The Tribunal found that although the trading was limited and there may not have been active solicitation in the issuance of the shares, the issuance of shares was a breach of the temporary cease trade order.[17]

[18] A breach of a Tribunal order shows a disregard for the rule of law as well as for the Tribunal and its processes and undermines public confidence in capital markets.[18]

[19] Staff submits that Stinson's and Hospitality Corp.'s failure to consult with counsel before acting in breach of the temporary cease trade order is another example of his decision not to seek legal advice regarding the applicability of Ontario securities law to the hotel project and demonstrates a pattern of acting on uninformed beliefs without first seeking appropriate advice.

[20] The respondents submit that the limited nature of the breach should be considered to ensure proportionate sanctions are ordered. Only two of the respondents contravened the temporary cease trade order and the breach was limited to issuing shares to nine existing investors in lieu of interest payments.

[21] We find that the breach of the cease trade order was another instance of Stinson and Hospitality Corp. disregarding Ontario securities law. Although the scope of the breach was limited, we give it moderate weight in considering our sanctions decision and costs decision.

---

[16] Merits Decision at paras 69-71

[17] Merits Decision at para 72

[18] *Da Silva (Re)*, 2012 ONSEC 32 at paras 8-9

3.1.3 Aggravating factors

[22] Staff submits that there are two aggravating factors going to the seriousness of the misconduct. The first we refer to as recordkeeping deficiencies that engage the Tribunal's public interest jurisdiction and the second are certain false and misleading statements made to investors about the material terms of the investments. We agree that both of these factors are aggravating when considering the seriousness of the misconduct.

[23] The respondents failed to segregate investor funds, failed to maintain accurate records of funds received from investors, and failed to properly record the use of investors' funds, thus engaging the Tribunal's public interest jurisdiction.[19]

[24] Staff submits that conduct of this sort does not attract an independent administrative penalty, but it is an aggravating factor. In support, Staff cites *Majestic Supply Co. Inc. (Re)*[20] and *Cartu (Re)*.[21]

[25] The respondents submit that the nature of the conduct that was found to be contrary to the public interest in *Majestic* and *Cartu* is distinguishable from the conduct in this case, in that it was more egregious, and that the conduct in this case should not be considered an aggravating factor. The respondents submit that in *Majestic* and *Cartu* the respondents were involved in the business of trading or engaging in deceptive and fraudulent practices, neither of which was found to be the case in the merits hearing for this proceeding.

[26] We agree with the respondents that the misconduct in *Majestic* and *Cartu* was more egregious than in this case. However, we also accept Staff's submission that those cases stand for the principle that conduct which engages the public interest jurisdiction can be an aggravating factor in assessing the seriousness of the misconduct.

[27] Staff submits that a second aggravating factor going to the seriousness of the misconduct is the false and misleading statements made by Stinson and Hotel Inc. to investors about certain material terms that investors considered relevant

---

[19] Merits Decision at paras 73-77

[20] 2013 ONSEC 42 (***Majestic***) at para 83

[21] 2022 ONCMT 21 (***Cartu***) at paras 16-17

in making their decision to invest in the hotel project. Stinson and Hotel Inc. admitted to making the following misleading statements:

a. suite purchases were qualified investments for RRSPs and TFSAs;

b. investor funds were secured by a mortgage; and

c. investor funds would be secured by an interest reserve.[22]

[28] The respondents submit that Stinson and Hotel Inc. intended for the representations to be true at the time that they were made and removed the representations from subsequent versions of the investment agreements.

[29] The respondents further submit that the Tribunal in the merits decision did not find that the respondents were liable for making false or misleading statements to investors that would be relevant to entering into or maintaining a trading relationship. Therefore, this Tribunal ought not to give any weight to the false or misleading statements.

[30] While the Tribunal in the merits decision did not find the respondents to be in a trading relationship with investors, Stinson and Hotel Inc. nevertheless admitted to making the false or misleading statements to investors.[23] We agree with Staff and find that the false and misleading statements further aggravate the seriousness of Stinson's and Hotel Inc.'s misconduct.

3.2 Level of activity and whether isolated or recurrent

[31] Staff submits that the respondents' level of activity in the capital markets was extensive and recurrent. Over a 40-month period the respondents raised over $13 million from approximately 207 investors through subscription agreements. The respondents actively promoted the investments and continued to issue shares in violation of the temporary cease trade order.

[32] The respondents emphasize that Stinson is a real estate developer and his activity in the capital markets was limited to raising money for the hotel project.

---

[22] Mertis Decision at para 62

[23] Merits Decision at paras 61-68

[33] Despite the activity being limited to the hotel project, we find that raising over $13 million from approximately 207 investors is a significant level of activity in the capital markets.

3.3 Experience in the market

[34] Staff submits that Stinson, as the directing mind of the corporate respondents, had the relevant experience to appreciate the seriousness of his misconduct and the misconduct of the corporate respondents.

[35] Staff further submits that Stinson's experience included being previously registered as a chief compliance officer and as a limited market dealer. Stinson's previous settlement agreement with the Commission provided him with additional experience that underscored the requirement to carefully determine Ontario securities law requirements before engaging with Ontario investors.

[36] The respondents submit that Stinson is a real estate developer. The respondents sought to cast Stinson as inexperienced in the capital markets and noted that he was only registered for a short period of time during 2006 until early 2007.

[37] We view Stinson's experience in Ontario's capital markets, including his previous securities law violations that resulted in a settlement agreement with the Commission, as a significant factor in determining the appropriate sanctions.

3.4 Benefit

[38] The respondents submit that there is no evidence that Stinson, or any of the corporate respondents, obtained any benefit from the investments. There was no compensation for trades while raising funds and the funds were not raised for any purpose other than the hotel project.

[39] We agree that there is no evidence of any direct benefit to the respondents. We find there was an indirect benefit to them from raising money for the hotel project, which advanced the respondents' interests. We therefore give this factor limited weight.

3.5 Mitigating factors

[40] Staff submits that Stinson cannot plead an erroneous belief that Ontario securities law was not applicable in connection with the hotel project as a mitigating factor. Staff asserts that Stinson's choice not to avail himself of legal

advice given his history and even when he was represented by counsel illustrates his cavalier approach to Ontario securities law, including Tribunal orders.

[41] We find that Stinson's actions should be distinguished from an individual who holds an honest but incorrect belief that Ontario securities law is not engaged given Stinson's previous history with the Commission and the fact that he had legal counsel involved in connection with the hotel project.

[42] The respondents submit that Stinson is remorseful. He has acknowledged the impropriety of his conduct and fully participated and co-operated with the Commission during its investigation and during the subsequent merits hearing.

[43] We acknowledge that Stinson is remorseful and has fully participated and co-operated, particularly by entering into two agreed statements of fact with respect to this proceeding. We give a moderate amount of weight to this factor in both our sanctions decision and costs decision.

3.6 Specific and general deterrence

[44] We consider specific and general deterrence when assessing the appropriate administrative penalty below.

[45] Staff submits that strong deterrent messages both specific and general are necessary in this case given the respondents' demonstrated failure to appreciate the necessity of compliance after a previous settlement with the Commission and again after the Tribunal issued a cease-trade order in March 2020.

[46] The respondents submit that Staff is putting undue weight on general deterrence in seeking the maximum administrative penalty of $1 million. The respondents cite *Cartaway Resources Corp. (Re)* where the Supreme Court of Canada cautioned that:

> [t]he weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission. Protecting the public interest will require a different remedial emphasis according to the circumstances. Courts should review the order globally to determine whether it is reasonable. No one factor should be considered in isolation because to do so would skew the textured and nuanced evaluation conducted by the Commission in crafting an order in the public interest. Nevertheless, unreasonable

> weight given to a particular factor, including general deterrence, will render the order itself unreasonable.[24]

[47] The respondents submit that disgorgement, an administrative penalty and market restrictions when considered globally achieve the goals of specific and general deterrence. Unreasonable weight need not be given to specific or general deterrence when considering the amount of an administrative penalty.

[48] In this case we give weight to both specific and general deterrence. We give more weight to specific deterrence due to the respondents' failure to appreciate the importance of complying with Ontario securities law, especially in light of Stinson's previous settlement in 2006 with the Commission.

4. NON-MONETARY SANCTIONS

[49] Staff seeks to have the respondents permanently removed from Ontario's capital markets. The respondents did not object, other than seeking two carve-outs from the non-monetary sanctions.

4.1 Director and Officer Bans

[50] The respondents submit that Stinson has no intention of participating in the capital markets. However, Stinson seeks a narrow and limited carve-out that permits him to remain in his role as director and officer of a corporation that is registered as a brokerage under *REBBA*. Stinson undertakes to be the sole shareholder of the corporation and to refrain from issuing or proposing to issue securities to any third parties.

[51] Staff submits that Stinson has not adduced any evidence that the proposed carve-out is necessary for his livelihood. In any event, Stinson does not need to control a corporation to operate a brokerage, or act as a broker under *REBBA*. Staff proposes that Stinson re-organize his brokerage so as not to operate it as a corporation.

[52] As support for the requested carve-out, Stinson cites *Simply Wealth Financial Group Inc.*[25] and *Rezwealth Financial Services (Re)*.[26] However, these two cases

---

[24] *Cartaway* at para 64
[25] 2013 ONSEC 2
[26] 2014 ONSEC 18

are distinguishable from this one because they provide for trading carve-outs with such carve-outs only becoming effective after the financial penalties were paid.

[53] We find that *Solar Income Fund Inc. (Re)*,[27] is more persuasive in supporting a carve-out for acting as a director and officer. In *Solar Income Fund*, despite a finding of fraud, a limited carve-out was granted for personal corporations. The Tribunal stated:

> we acknowledge Staff's observation that it is unaware of any Tribunal case in which fraud was found against an individual who then benefited from a carve-out permitting the individual to act as an officer or director of an issuer. On the other hand, we are unaware of any authority that engages in a discussion of the propriety of that kind of carve-out in such a situation…here, the conduct does not mandate the denial of a carve-out.[28]

[54] We must consider the facts before this Tribunal. Here, the carve-out requested by Stinson has no connection with raising public funds. The rationale is tied to Stinson's career and the existing corporate structure of his real estate brokerage company. The proposed limit on the carve-out, that Stinson be the sole shareholder and refrain from issuing any securities to third parties, is reasonable. There are plainly benefits to operating a business as a corporation and with the limits proposed we do not see the need for Stinson to re-organize his brokerage business to avoid incorporation.

4.2 Trading Bans

[55] Staff seeks to permanently ban the respondents from trading in securities or derivatives, acquiring securities or relying on any exemptions contained in Ontario securities law, as more particularly described below. The respondents do not oppose the permanent trading bans, as Stinson does not intend to have any further participation in the capital markets, subject to the requested carve-out discussed below.

---

[27] 2023 ONCMT 3 (***Solar Income Fund***)

[28] *Solar Income Fund* at para 149

[56] The respondents seek clarification from the Tribunal on what is permissible as it relates to investors' shares of the corporate respondents that are held within registered accounts (RRSPs or TFSAs). In particular, the respondents seek a carve-out from any trading ban on securities of the corporate respondents to allow for investors to be able to transfer their shares out of their registered accounts and for the corporate respondents to give any required authorizations to the investors to do so.

[57] The respondents seek a further carve-out from any trading ban to permit investors' shares of the corporate respondents to be redeemed or cancelled upon return of their investment.

[58] Staff submits that the respondents are not entitled to any trading carve-outs because participation in the capital markets is a privilege and not a right.[29]

[59] Staff further submits that a trading carve-out is not necessary because the definition of a "trade" under the *Act* would not capture an investor's redemption or cancellation of existing shares because the redemption or cancellation of existing shares held by investors does not involve selling or disposing of securities by the respondents for valuable consideration, or any acts in furtherance of such sale or disposition. Similarly, a transfer of shares is expressly excluded from the definition of a "trade" under the *Act*, except where the transfer is for the purpose of giving collateral for a debt made in good faith.[30]

[60] We decline to make a finding, in the absence of a proper factual record, about whether hypothetical trading activity meets the definition of "trade" under the *Act* and whether a resulting carve-out from a trading or acquisition prohibition is necessary. The respondents can apply to the Tribunal for a variation of our order should they require relief in the future arising from a more definitive factual record.

---

[29] *Kitmitto (Re)*, 2023 ONCMT 4 at para 22, citing *Erikson v Ontario (Securities Commission)*, 2003 CanLII 2451 (ONSC) at para 55

[30] *Act*, s 1(1)

5. FINANCIAL SANCTIONS

[61] In the merits hearing, Restoration Corp. was only found to have engaged the Tribunal's public interest jurisdiction by failing to segregate investor funds, failing to maintain accurate records of funds received from investors, and failing to properly record the use of investors' funds. Restoration Corp. was not found to have breached s. 53(1) of the *Act* or the temporary cease trade order. Accordingly, the Tribunal cannot order disgorgement or an administrative penalty against Restoration Corp. as this conduct does not constitute a failure to comply with Ontario securities law, as required by paragraphs 8 and 9 of s. 127(1) of the *Act*.

5.2 Disgorgement

[62] Disgorgement orders are intended to: (a) ensure that respondents do not benefit from their breaches of the *Act*; and (b) deter the respondents and others from engaging in similar misconduct.[31]

[63] The Tribunal has set out various factors that are relevant to 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 that a respondent 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.[32]

---

[31] *Al-Tar Energy Corp. (Re)*, 2011 ONSEC 1 at para 71

[32] *Pro-Financial Asset Management Inc. (Re)*, 2018 ONSEC 18 at para 50

[64] It is not in dispute that the respondents received $13.177 million and USD$364,000 from the sale of securities through subscription agreements.

[65] The respondents submit that any disgorgement order ought to be conditional on the hotel returned to operation and ultimately sold in order to repay the investors. The disgorgement amount ordered should also be subject to adjustment after this occurs and should be reduced to reflect any amounts that are repaid to investors. During oral submissions, the respondents clarified that they were seeking to have the implementation of any disgorgement order delayed for a period of three years to allow them to attempt to sell the hotel and repay investors.

[66] Staff submits that the respondents' assertion that no investor funds are available to satisfy a disgorgement order verges on an assertion of impecuniosity. Staff further submits that no evidence has been provided to establish the respondents' inability to pay a disgorgement amount, and therefore this assertion should be given no weight. Staff cites *Maple Leaf Investment Fund Corp. (Re),*[33] where the Tribunal held that although "a respondent's ability to pay is one of the factors to be considered in determining the appropriate monetary sanctions", where the respondents only make submissions and provide no evidence in support of their claims of impecuniosity, the factor will be given limited weight in determining the sanctions to be imposed, "and in particular, the disgorgement orders and administrative penalties…".[34]

[67] We concur with Staff. In the absence of any evidence of impecuniosity, we cannot accept the bare statement that any disgorgement order will have very little chance of being satisfied unless the hotel is able to resume operations and is sold as a going concern.

[68] The respondents urge us to put weight on the factor of whether investors who suffered losses are likely to be able to obtain redress. The respondents submit that there remains a real asset and any chance the investors have to recoup

---

[33] 2012 ONSEC 8 (***Maple Leaf***)

[34] *Maple Leaf* at para 18

their investments is if the hotel is returned to operations and sold as a going concern.

[69] In support, the respondents cite *Phillips (Re)*,[35] as authority for the proposition that the Tribunal may exercise its discretion to decline ordering full disgorgement in order to avoid depleting the assets available to investors.[36]

[70] Staff submits that the onus is not on Staff to demonstrate that victims of misconduct are unlikely to obtain redress. Rather, if a respondent is able to show that those who suffered losses are likely to obtain redress, that may provide an appropriate basis to reduce a disgorgement amount or to choose not to order any disgorgement.[37] Staff submits that there is no evidence pertaining to the damage caused by a fire to the hotel, an appraisal of the hotel, a sale price for the hotel, any potential buyers for the hotel, or where the sales proceeds would go.

[71] We distinguish *XI Biofuels (Re)*, cited in *Phillips*. In that case, disgorgement was only ordered against the individual respondents and not the corporate respondents because the corporate respondents were in bankruptcy proceedings and there was opportunity for the investors to recoup some losses through those proceedings.[38]

[72] We likewise distinguish *Phillips.* In that case, Phillips, the directing mind of the corporate entity, was ordered to disgorge the full amount raised less the amount distributed to investors. In that case, the corporate entity was already in a court supervised wind-up.

[73] The facts before us are different. We are sympathetic to the idea of investors obtaining redress through the sale of the assets. However, there is insufficient evidence in this case that such an outcome is on the horizon or that a process involving an independent third party, such as a bankruptcy trustee or receiver, would occur. The corporate respondents remain under the control of Stinson.

---

[35] 2015 ONSEC 36 (***Phillips***)

[36] *Phillips* at para 34, citing *XI Biofuels (Re)*, 2010 ONSEC 29 (***XI Biofuels***) at para 72

[37] *Pro-Financial Asset Management Inc. (Re)*, 2018 ONSEC 18 at para 70

[38] *XI Biofuels* at para 72

[74] The respondents further submit that a disgorgement order is dependent on whether the amount is reasonably ascertainable. The respondents assert that there is no evidence as to the amount raised by each respondent, even if the total amount raised is ascertainable. The respondents cite the settlement order of Stephen Kelley where no disgorgement was ordered.

[75] We reject this submission. Kelley was an employee acting on behalf of the respondents. He and Staff negotiated a settlement agreement. The settlement agreement did not include disgorgement. The Tribunal, in approving the settlement agreement, confirmed that it may order a respondent to disgorge funds obtained in contravention of the *Act* regardless of whether that respondent personally obtained the funds, but agreed with Staff that a disgorgement order was not necessary in the totality of the circumstances.[39]

[76] We conclude that the respondents, other than Restoration Corp., must disgorge the full amount. It was obtained through non-compliance with Ontario securities law, investors have not recovered their investments, the amount is ascertainable, the hotel project has not been transferred to a third party over which Stinson has no control, and there is insufficient evidence that investors may obtain redress from a hotel sale or any other source. Stinson remains the directing mind of the corporate respondents. We therefore find that the respondents, other than Restoration Corp., shall disgorge $13.177 million and USD$364,000 jointly and severally.

5.3 Administrative penalty

[77] The purpose of an administrative penalty is to deter respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets.[40]

[78] Staff seeks a penalty of $1 million payable jointly and severally by the respondents.

---

[39] *Kelley Settlement Decision* at para 15

[40] *Limelight Entertainment Inc. et al.*, 2008 ONSEC 28 at para 67

[79] Staff submits that in *Rowan et al.*,[41] the Tribunal noted that an administrative penalty should be of a magnitude to ensure effective deterrence. The Tribunal attaches a cost to non-compliance. Financial sanctions must be significant in order to have their intended deterrent effect.[42]

[80] The respondents submit that it would be inconsistent with the principle of proportionality to grant Staff's request of a $1 million administrative penalty when the Tribunal has historically reserved such penalty for far more egregious conduct such as fraud or where profits are realized as a result of misconduct.

[81] The factors to consider in ordering an appropriate administrative penalty were outlined in *Global Energy Group Ltd et al*.:[43]

> …factors to be considered in determining an appropriate administrative penalty include: the scope and seriousness of the misconduct; whether there were multiple and/or repeated breaches of the Act; whether the respondent realized a profit as a result of the misconduct; the amount of money raised from investors; and the level of administrative penalties imposed in other cases.[44]

[82] The respondents cite three cases to support an administrative penalty below the maximum requested by Staff:

a. *Phillips* – the respondents perpetrated a fraud in raising $19 million and Phillips, the directing mind behind the enterprise, received an administrative penalty in the amount of $700,000;[45]

b. *Black Panther et al.*[46] – in addition to fraud, the respondents engaged in impermissible trading and advising, conducting an illegal distribution and the owner misled Staff. The company and its owner raised $425,000. The administrative penalty was $300,000;[47]

---

[41] 2009 ONSEC 46 (***Rowan***)
[42] *Rowan* at paras 70, 73-74
[43] 2013 ONSEC 44 (***Global Energy***)
[44] *Global Energy* at para 36
[45] *Phillips* at para 69
[46] 2017 ONSEC 8 (***Black Panther***)
[47] *Black Panther* at paras 1-2, 79

c. *York Rio Resources Inc. et al.*[48] – the respondents carried on no legitimate business, raising $18 million through their fraudulent conduct. The three directing minds were ordered to pay an administrative penalty of $1 million each while the remaining respondents who were not directing minds, were ordered to pay administrative penalties in the range of $75,000 - $200,000.[49]

[83] The respondents point to the merits decision to reaffirm that there was a bona fide business during the start-up phase of the hotel project. They submit that there are no allegations of fraud and there is no evidence that the money raised was used for any other purpose than the hotel project. The respondents submit that an appropriate administrative penalty is $100,000.

[84] Considering the factors outlined in *Global Energy* including the related consideration of such factors above, we find that the misconduct was serious, there were multiple breaches of the *Act*, there was significant activity in the capital markets and Stinson had significant experience, including a prior settlement with the Commission. However, the scope of the misconduct was limited to capital raising for the hotel project, Stinson did not directly benefit or receive a profit from the activities and the conduct was not fraudulent. In addition, Stinson was remorseful and cooperated throughout the proceeding. We consider the administrative penalties ordered in other cases. In particular, we note that significant weight is attached to those respondents who act as directing minds of the corporations involved in the misconduct. As a result, we conclude that an administrative penalty against the respondents, other than Restoration Corp., in the amount of $600,000 is appropriate.

6. COSTS

[85] Section 127.1 of the *Act* grants the Tribunal the discretion to order a person or company to pay the costs of an investigation and/or a hearing if the Tribunal is satisfied that they have not complied with Ontario securities law or have not acted in the public interest.

---

[48] 2014 ONSEC 9 (***York Rio***)

[49] *York Rio* at paras 78-81.

[86] Staff requests costs of the investigation and hearing of $316,000, consisting of fees of $300,000 and disbursements of $16,000, representing a reduction of approximately 40% of the total fees incurred.

[87] The respondents submit that the costs sought by Staff are significant and point to the fact that Staff also investigated another respondent, Kelley, who settled this proceeding, and it is not clear if any of the costs claimed in this proceeding relate to Staff's investigation and settlement with Kelley.

[88] The respondents further submit that two of the allegations were not proven by Staff: (i) that the respondents were in the business of trading; and (ii) that the respondents made misleading statements relevant to an investor deciding whether to enter into or maintain a trading relationship with the respondents. The respondents submit that these were primary allegations which would have involved considerable effort on the part of Staff but which were not proven, and there is no evidence about the time spent and the amounts claimed on these allegations.

[89] Finally, the respondents submit that insufficient consideration has been given to the cooperation by the respondents in this proceeding. Two agreed statements of fact were filed avoiding lengthy evidentiary hearings on the merits and sanctions.

[90] We agree with the respondents' submissions. For the reasons cited above, including taking the respondents' submissions into account, we find that it is appropriate to set costs in the amount of $150,000 for fees plus $16,000 for disbursements for a total of $166,000 to be paid by the respondents jointly and severally. This amount represents an approximate 70% reduction in total fees incurred for the investigation and hearing.

7. CONCLUSION

[91] For the reasons set out above, we will issue an order providing that:

a. with respect to the respondents, an order:

i. pursuant to paragraph 2 of s. 127(1) of the *Act* that trading in any securities or derivatives shall cease permanently;

ii. pursuant to paragraph 2.1 of s. 127(1) of the *Act* that the acquisition of any securities shall cease permanently;

iii. pursuant to paragraph 3 of s. 127(1) of the *Act* that any exemptions contained in Ontario securities law do not apply permanently;

iv. pursuant to paragraph 8.5 of s. 127(1) of the *Act* that the respondents are permanently prohibited from becoming or acting as a registrant or as a promoter; and

v. pursuant to s. 127.1 of the *Act* that the respondents, jointly and severally, shall pay to the Commission $166,000, for the costs of the investigation and hearing.

b. With respect to Stinson, an order:

i. pursuant to paragraphs 7 and 8.1 of s. 127(1) of the *Act* that Stinson resign any positions that he holds as a director or officer of an issuer or registrant, except Stinson is permitted to remain in his role as director and officer of a corporation that is registered as a brokerage under *REBBA* provided Stinson is the sole shareholder of the corporation and does not issue or propose to issue securities of the corporation to any third party; and

ii. pursuant to paragraphs 8 and 8.2 of s. 127(1) of the *Act* that Stinson is permanently prohibited from acting as a director or officer of an issuer or registrant, except as provided in clause b. i. above;

c. With respect to Stinson, Hotel Inc., Management Inc., Hospitality Corp. and Buffalo Central, an order:

i. pursuant to paragraph 9 of s. 127(1) of the *Act* that they, jointly and severally, shall pay to the Commission an administrative penalty of $600,000; and

ii. pursuant to paragraph 10 of s. 127(1) of the *Act* that they, jointly and severally, shall disgorge to the Commission the amounts of $13.177 million and US$364,000.

Dated at Toronto this 15th day of December, 2023

"*Cathy Singer*"

Cathy Singer

"*Sandra Blake*"

Sandra Blake

"*Geoffrey D. Creighton*"

Geoffrey D. Creighton