Ontario

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: *Ontario Securities Commission v Drage,* 2026 ONCMT 1
Date: 2026-01-16
File No. 2025-14

BETWEEN:

ONTARIO SECURITIES COMMISSION

(Applicant)

- and -

CLAIRE AMANDA DRAGE

(Respondent)

REASONS FOR APPROVAL OF A SETTLEMENT

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

Adjudicators:	James Douglas (chair of the panel) Dale R. Ponder Jane Waechter	
Hearing:	By videoconference, December 19th, 2025	
Appearances:	Khrystina McMillan Christine Gorgi	For the Ontario Securities Commission
	Daniel Rosenbluth	For Claire Amanda Drage

REASONS FOR APPROVAL OF A SETTLEMENT

[1] The Ontario Securities Commission has alleged that Claire Amanda Drage (**Drage**) committed a fraud and violated the registration and prospectus requirements of the *Securities Act*[1] (the **Act**) by selling and brokering promissory notes to investors to fund third party real estate projects through two companies under her control (**Lion's Share** and **Windrose**, collectively the **Companies**). When the Companies and the real estate projects showed tangible signs that they were at risk of defaulting or facing insolvency, Drage continued to tell investors that their investments were much better protected from overleverage than they were. Without disclosing the precarious financial state of the Companies and the developers, Drage and the Companies continued to accept new investor funds.

[2] The Commission and Drage agreed to resolve the allegations under the terms of a negotiated settlement agreement, and they sought approval of their settlement agreement at a hearing on December 19, 2025. We approved their settlement agreement and ordered the sanctions that the parties proposed.

[3] Drage and the Companies sold high-interest, unsecured promissory notes to investors that were issued by the Companies; and Lion's Share also brokered unsecured promissory notes that were issued directly by third party borrowers to investors, for which Lion's Share earned a fee (collectively, the **investor notes**). Drage admits that the investor notes were securities under the Act. The proceeds of the sale of the investor notes were used to fund various real estate projects undertaken by developers across Ontario.

[4] Drage and the Companies prepared all promotional materials for investors, arranged their loans and the issuance of the investor notes, and communicated with investors about the use of their funds. Drage met with prospective investors to discuss their investment goals and risk tolerance. Drage and the Companies also approved the developers, assisted them with their financing plans, and monitored their operations and the performance of their loans.

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[1] RSO 1990, c S.5

[5] While promoting the investor notes, Drage and the Companies made false and misleading representations that the developers and projects were financially successful, not overleveraged and likely to repay their debts. By no later than 2021, Drage knew or ought to have known of the severe liquidity issues faced by the Companies and the developers. The liquidity issues worsened throughout the period 2021 to 2024, ultimately resulting in bankruptcy of the Companies and Drage and in significant investor losses. Drage and the Companies continued to sell investor notes until February 2024.

[6] The Companies were declared bankrupt in April and June 2024, respectively. Drage filed an assignment in bankruptcy in April 2024. Drage is undischarged from bankruptcy.

[7] Drage has admitted that she and the Companies violated the registration and prospectus requirements of ss. 25(1) and (3) and 53(1) of the Act. She has also admitted that her conduct and that of the Companies amounted to a fraud under s. 126.1(1)(b) of the Act. She further admits that she authorized, permitted or acquiesced in breaches of the Act by the Companies and that she is therefore deemed to have not complied with Ontario securities law to the same extent as the noncompliance by the Companies.

[8] Based on the facts set out in the settlement agreement, Drage committed a large-scale fraud. At the time of her bankruptcy, 450 investors were owed approximately $90 million. Drage's misconduct resulted in significant investor losses and is highly egregious.

[9] In the circumstances, and even in a settlement context, we would expect a comprehensive set of sanctions that are proportionate to Drage's severe level of misconduct. We note that Drage professed that she did not understand her obligations under the Act. This is not a mitigating factor in our view.

[10] The proposed sanctions include all the market participation bans available under s. 127(1) of the Act. Importantly, the market participation bans are permanent, with the exception of limited trading and acquisition carve-outs, to reflect the maximum disapprobation for Drage's conduct.

[11] We did, however, question the fact that there were no financial sanctions, and particularly no disgorgement order. The lack of a disgorgement order is relevant

because of Drage's bankruptcy combined with her admission of fraud in the settlement agreement. Disgorgement obligations can survive bankruptcy in circumstances of fraud, as held by the Supreme Court of Canada in *Poonian v British Columbia (Securities Commission)* (***Poonian***).[2] However, an order that survives bankruptcy does not come with any guarantee that it will be satisfied from the future earnings of the bankrupt.

[12] With the clarification of the law provided in *Poonian*, we would generally expect to see some amount of disgorgement in settlements involving admissions of fraud, even when the respondent is bankrupt or insolvent. We say this regardless of whether investors might reasonably expect to receive any proceeds from the disgorgement order.

[13] We agree with the Tribunal's observations in *Smith (Re)*[3] that a monetary sanction that is merely symbolic may have a perverse effect and diminish confidence in the Commission's enforcement process.[4] However, in *Smith (Re),* the settlement agreement provided that the Commission would not take future steps to enforce payment of the agreed administrative penalty and costs.[5] It was that provision that made the ordered administrative penalty and costs merely symbolic.

[14] In our view, an unconditional disgorgement order reinforces both general and specific deterrence and serves a forward-looking investor and market protective purpose. The Commission's oral submissions appeared to interpret *Smith (Re)* as suggesting that any financial order unlikely to be satisfied is pointless, which is incorrect. Unlike the unenforceable administrative penalty criticized in *Smith (Re)*, a disgorgement order that survives bankruptcy is not merely symbolic. An unconditional disgorgement order may become collectible if a respondent acquires resources after being discharged from bankruptcy.

[15] We also note that *Smith (Re)* predates *Poonian*, which confirmed that disgorgement orders survive bankruptcy and therefore advance the protective

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[2] 2024 SCC 28 at paras 109 to 114

[3] *Smith (Re),* 2018 ONSEC 33

[4] *Smith (Re),* 2018 ONSEC 33 at para 21

[5] *Smith (Re),* 2018 ONSEC 33 at para 19; see also paragraph 56 of the *Smith (Re) Settlement Agreement* dated May 28, 2018.

objectives of the Act. *Smith (Re)* is of limited precedential value after *Poonian*, since the Tribunal in *Smith (Re)* appeared to assume that administrative penalties could survive bankruptcy while disgorgement would not, while *Poonian* clarified that the opposite is correct.

[16] Given *Poonian*, the Tribunal would have expected the settlement to include a disgorgement order that survives bankruptcy. In this case, however, Drage is a defendant in civil proceedings by investors that will continue after she is discharged from bankruptcy. A disgorgement order that survives bankruptcy could compete with investor recovery in those proceedings, which is not a desirable outcome. As such we are satisfied that we can approve the settlement even though it did not include a disgorgement order.

[17] As emphasized by the Commission in its submissions, Drage's contraventions of the Act are serious and the impact of her misconduct on investors has been significant. There are also relevant mitigating factors, including that Drage:

a. sold her home, liquidated her Registered Retirement Savings Plans and provided the net proceeds to the trustee,

b. is working three part time or casual jobs and making payments of her surplus income to the bankruptcy trustee, and

c. cooperated with the Commission during its investigation and entered into a settlement.

[18] As a result, we are satisfied that the negotiated settlement falls within a range of reasonable outcomes. The Tribunal respects the negotiation process and accords significant deference to the resolution reached by the parties. The proposed sanctions against Drage should deter both her and others from fraud, registration and prospectus violations.

[19] In conclusion, we found that the proposed settlement is reasonable and in the public interest. Following the hearing on December 19, 2025, we issued an order approving the settlement substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 16th day of January, 2026.

"James Douglas"

James Douglas

"Dale R. Ponder"

Dale R. Ponder

"Jane Waechter"

Jane Waechter