



Ontario
Securities
Commission

Commission des
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de l'Ontario

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Citation: Seemann (Re), 2018 ONSEC 27

Date: 2018-06-01

File No. 2018-19

**IN THE MATTER OF
HARALD SEEMANN, JENS BRANDT AND KARL PAWLOWICZ**

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Section 127 of the Securities Act, RSO 1990, c S.5)**

Hearing: June 1, 2018

Decision: June 1, 2018

Panel: Mark J. Sandler Commissioner and Chair of the Panel

Appearances: Jennifer Lynch For Staff of the Commission

Bill Michelson For Karl Pawlowicz

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.

- [1] From June 2014 to August 2015, Mr. Pawlowicz was the Chief Executive Officer and a director of a public company, Big Rock Labs Inc. (**BLA**). At the material time, BLA was a technology company which specialized in digital product research and development. Its founder, Harald Seemann was also the Chief Financial Officer, and a director of BLA. He was the directing mind of the company.
- [2] This matter is about Mr. Pawlowicz who, while serving as CEO and a director, participated in, and facilitated the manipulative trading in shares of BLA.
- [3] Commission Staff and Mr. Pawlowicz have come to a settlement agreement in relation to the matter. That settlement agreement has been filed with the Commission. Part III of that settlement agreement sets out the agreed facts which I need not set out, in full, in these brief oral reasons.
- [4] Based on those agreed facts, I am satisfied (and Mr. Pawlowicz admits) that:
- a. He was directed by Seemann to open two trading accounts at Questrade in May 2014. He did so. He then provided Seemann with his log-in information and his consent to Seemann conducting trading activities in those accounts. Mr. Pawlowicz was also aware that Seemann held the log-in information to the trading accounts of other insiders at BLA;
 - b. Seemann used his access to Mr. Pawlowicz's Questrade accounts, as well as his access to the accounts of other insiders, to engage in manipulative trading of BLA shares from June 2014 to June 2015. Mr. Pawlowicz was aware that Seemann was trading BLA shares in these various accounts. He was not advised by Seemann or others that Seemann's trading practices were representative of improper or manipulative trading under the Ontario Securities Act¹ (the **Act**);
 - c. Mr. Pawlowicz also held a cash trading account at the Toronto Dominion Bank. In July 2014, Seemann instructed Mr. Pawlowicz to place a bid for BLA shares on the market through this TD account and then to advise Seemann that he had done so. Seemann told Mr. Pawlowicz to do so in an attempt to show that there was an interest in buying BLA shares. Mr. Pawlowicz followed Seemann's instructions.
 - d. Staff do not allege that Mr. Pawlowicz earned a profit as a result of these activities. However, he participated in and facilitated manipulative trading in BLA shares. This constituted a contravention of s. 126.1(1)(a) of the Act and was conduct contrary to the public interest. Indeed, he completely failed to meet the standard expected of an officer and director participating in Ontario's capital markets and interfered with the free and fair operation of those markets.
- [5] The terms of settlement here involve the following:

¹ RSO 1990, c S.5.

- a. the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- b. the Respondent pay an administrative penalty of \$12,500, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act;
- c. trading by the Respondent in any securities and derivatives cease for a period of 2 years commencing on the date of the Order pursuant to paragraph 2 of subsection 127(1) of the Act, except that trading shall be permitted in mutual fund, exchange-traded fund or index fund securities for the account of any registered retirement savings plans, registered education saving plans, tax-free savings accounts and self-directed retirement savings plans (as defined in the Income Tax Act (Canada)) in which the Respondent has legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts;
- d. the acquisition of any securities by the Respondent is prohibited for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 2.1 of subsection 127(1) of the Act, except that the acquisition of securities shall be permitted in mutual fund, exchange-traded fund or index fund securities for the account of any registered retirement savings plans, registered education saving plans, tax-free savings accounts and self-directed retirement savings plans (as defined by the Income Tax Act (Canada)) in which the Respondent has sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom he must give a copy of this Order at the time he opens or modifies these accounts;
- e. any exemptions contained in Ontario securities law do not apply to the Respondent for a period of 2 years, commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 3 of subsection 127(1) of the Act; and
- f. the Respondent be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8 of subsection 127(1) of the Act.

[6] It was agreed that the \$12,500 administrative penalty would be paid at or before this hearing.

[7] The Commission is only to disapprove a settlement agreement in exceptional circumstances. This deference is explained, in part, by the high desirability of encouraging settlement agreements between Staff and respondents, and promoting certainty in the industry. In my view, this settlement agreement falls within the range of reasonable dispositions available in the circumstances, and most importantly, is in the public interest. In particular, it appropriately addresses both general and specific deterrence, and takes into consideration a number of mitigating factors. These include, but are not limited to the following:

- a. Mr. Pawlowicz has not previously been the subject of OSC disciplinary proceedings;
- b. He cooperated with Staff throughout Staff's investigation and during these proceedings; and
- c. He has expressed remorse for his actions and saved the OSC significant time and resources associated with his participation in a fully contested hearing on the merits.

- [8] I am also mindful of the leading role played by Mr. Seemann in these manipulations: most particularly, in initiating these activities on Mr. Pawlowicz's part and providing him with his instructions. The significant differences in their level of involvement have been appropriately recognized when comparing this settlement agreement with the agreement entered into between Staff and Mr. Seemann. I have also reviewed several other precedents involving manipulative trading activity. These reinforce my view that the proposed sanctions to be imposed here fall within the range of reasonable outcomes available to me in the circumstances.
- [9] For these reasons, I approve the settlement agreement in the terms proposed by the parties.
- [10] Mr. Pawlowicz, this has undoubtedly been a painful lesson for you. However, as the Chief Executive Officer and a director of a public company, you were in a position of significant responsibility and trust. Indeed, as Chief Executive Officer and a director, you were responsible for BLA's compliance with Ontario securities legislation. You failed to comply with the law or adhere to the high standard of conduct expected of you in the circumstances. In accordance with paragraph 6 of subsection 127(1) of the Act, the Commission hereby reprimands you for the conduct which is the subject matter of this proceeding.
- [11] No costs were agreed to. No costs are awarded.

Dated at Toronto this 1st day of June, 2018.

"Mark J. Sandler"

Mark J. Sandler