IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S. 5, AS AMENDED

AND

IN THE MATTER OF SOHAN SINGH KOONAR,
SPORTS & INJURY REHAB CLINICS INC.,
SELECTREHAB INC., SHAKTI REHAB CENTRE INC.,
NIAGARA FALLS INJURY REHAB CENTRE INC.,
962268 ONTARIO INC.
APNA HEALTH CORPORATION AND APNA CARE INC.

Hearing:	**April 16, 2002**		
Panel:	**Paul M. Moore, Q.C.**	**-**	**Vice-Chair (Chair of the Panel)**
	Kerry D. Adams, FCA	**-**	**Commissioner**
	Robert L. Shirriff, Q.C.	**-**	**Commissioner**
Counsel:	**Johanna Superina** **Alexandra S. Clark**	**-**	**For the Staff of the Ontario Securities Commission**
	Sohan Singh Koonar	**-**	**Unrepresented**

EXCERPT FROM THE SETTLEMENT HEARING
CONTAINING THE ORAL REASONS FOR DECISION

The following statement has been prepared for purposes of publication in the Ontario Securities Commission Bulletin and is based on the transcript of the hearing, including oral reasons delivered at the hearing, in the matter of Sohan Singh Koonar, Sports & Injury Rehab Clinics In., Selectrehab Inc., Shakti Rehab Centre Inc., Niagara Falls Injury Rehab Centre Inc., 962268 Ontario Inc. Apna Health Corporation and Apna Care Inc. The transcript has been edited, supplemented and approved by the panel for the purpose of providing a public record of the panel's decision in the matter. This decision should be read together with the settlement agreement and order reproduced in the Bulletin commencing (2002), 25 OSCB 2232.

CASES REFERRED TO BY STAFF COUNSEL:

In the Matter of Kinlin (2002), 23 OSCB 6535; *In the Matter of Slipetz* (2002), 23 OSCB 5322; *In the Matter of Andrus* (1998), 21 OSCB 4777; *In the Matter of St. John* (1998), 21 OSCB 3851; *In the Matter of First Investments Ltd.* (1994), 17 OSCB 5858; *In the Matter of Hudec* (1993), 16 OSCB 2663; *In the Matter of Sussman et al.* (1993), 16 OSCB 2211; *In the Matter of Heidary* (2000), 23 OSCB 590; *In the Matter of Prydz* (2000), 23 OSCB 909; *In the Matter of Koman Info-Link Inc.* (2000), 23 OSCB 3973; *In the Matter of RT Capital Management Inc.* (2002), 23 OSCB 5117; *In the Matter of Belteco* (1998) 21 OSCB 7743; *In the Matter of Linden Dornford* (1998) 21 OSCB 7345.

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Vice-Chair Moore:

We approve the settlement as being in the public interest.

The only matter that was argued at length was the appropriateness of the agreed sanctions against Mr. Koonar: a life ban on becoming a registrant, a 15 year prohibition on acting as a director or officer of any company, and a 10 year cease trade.

We, first of all, turn to the argument that Mr. Koonar was not a registrant and, therefore, should not be expected to be held to the same high standard to which we would hold registrants in reviewing their conduct. We acknowledge that the duties and obligations of a registrant who becomes part of the system are more onerous than those of members of the public who are not registrants.

But we do not think the reverse of that is true: that people who are not market participants but who perform the role of a registrant in dealing with members of the public are not subject to the same kind of considerations that apply to the conduct of registrants.

In *In the Matter of St. John*, (1998), 21 OSCB 3851 it was stated:

> "Although these proceedings do not involve a registrant or the restriction, suspension or termination of registration, in our view similar considerations apply in the circumstances of these proceedings."

We feel the same comment applies in this case before us because Mr. Koonar was acting in the role of a registrant in issuing securities, promoting companies, and doing what required him to be registered to do. Consequently, in reviewing the appropriateness of sanctions based on past cases we do not think it appropriate to distinguish between cases where the respondents were registrants and those cases where the respondents were not registrants but were selling securities without registration or through fraudulent, manipulative or unfair means.

We also considered the fact that this was a first time offence; but on the agreed statement of facts Mr. Koonar did continue to sell securities illegally after he knew about the staff investigation, although the agreed statement of facts showed that that only continued for several months. The agreed statement of facts did not refer to any infractions of the Securities Act after the spring of 1998.

We were troubled by the fact that Mr. Koonar could not account for the moneys he raised from selling securities, the fact that investors were harmed, the fact that there were over 300 investors involved, and the fact that he was either incapable of keeping books and records and, therefore, shouldn't be dealing in the capital markets at all, or was very clever and somehow caused the books and records to disappear.

Whether he was incompetent in keeping books, or clever at making them disappear, we were concerned as to whether Mr. Koonar should ever be allowed back into the capital

markets.

Our role is not to penalise Mr. Koonar but to protect the public. Our first mandate under the Securities Act is to protect the public against fraudulent, manipulative and unfair practises. We are to do this pursuant to section 127 in a way that doesn't penalize or punish but in a way that is prophylactic and preventative.

Our second mandate under the Securities Act is to foster fair and efficient capital markets and confidence in them. We determined that because what Mr. Koonar has done was not done as a registrant (and was so clearly offside acceptable conduct - it was obviously reprehensible and egregious), it would not be viewed as the conduct of someone who is a market participant. Therefore, the mandate of relevance to us in this case is the first mandate: to protect the public against fraudulent, manipulative and unfair trade practices.

We are satisfied that the undertaking of Mr. Koonar in the settlement agreement to never apply for registration under the Act is, in effect, a permanent ban on his being a market participant. That is quite appropriate.

The 15-year prohibition against Mr. Koonar acting as a director or officer of any company applies not only to acting as a director and officer of a registrant or of a reporting issuer but to acting as a director or officer of any issuer including a private company. We believe that is quite appropriate although we are concerned that 15 years is on the short side.

The cease trade period staff originally asked for in the Notice of Hearing was for life. We believe that a permanent cease trade, on the facts before us, is something that we would have been comfortable with had this matter gone to a contested hearing and facts in the agreed statement of facts were established. While we feel uncomfortable that ten years is on the short side, we believe that it is still within an acceptable range when we look at the precedents.

The role of a panel reviewing a settlement agreement is not to substitute the sanctions it would impose in a contested hearing for what is proposed in the settlement agreement, but rather to make sure the agreed sanctions are within acceptable parameters.

We were not privy to all the considerations that staff had to face in arriving at the settlement agreement. We recognize that only facts that are agreed are put forward. However, all essential facts are required for us to make an appropriate decision. We are satisfied in this case that essential facts that we needed to know in order to come to a decision that this agreement is in the public interest were included in the settlement agreement. Consequently, although this was a difficult case we have concluded that the agreement is in the public interest.

If Mr. Koonar re-offends it is likely that he would do so within the next ten years. We would hope that enforcement staff will keep a file on Mr. Koonar, and that staff will treat this ten-year period, in some respects, as a probationary period. If there is no improper activity in

violation of the cease trade order in the ten-year period and Mr. Koonar never does apply to be a registrant, perhaps after that period of time he will either be too old or disinterested to get back into the market, or he will have learned his lesson.

But, as I said earlier, we are not here to punish. We are here to send the right message. We believe that although we feel a certain discomfort with the length of time of the cease trade prohibition, under all the circumstances, it is in the acceptable range.

Mr. Koonar, in the settlement agreement, said that he had no funds but that when he was in funds he would be willing to pay the $50,000 costs that the order provides for. I want to observe that we are issuing an order that these costs be paid; and if they are not paid in a reasonable period of time, regardless of Mr. Koonar's financial position, we anticipate that staff would take whatever action is available to staff to enforce the order. In other words, we do not anticipate Mr. Koonar being given an unreasonable length of time in order to find funds.

What concerned us most about Mr. Koonar's conduct was not just the fact that he failed to register as a registrant or that he issued securities without a prospectus, but that some of his statements to investors were untrue, some of the statements he made to staff were untrue; those parts of his conduct, we believe, show bad ethics and morality, as opposed ignorance of the law. For these reasons also we consider his conduct to be an egregious violation of the public interest.

Mr. Koonar has admitted that he did not file any income tax returns, that the companies involved did not file any income tax returns, and that Mr. Koonar is being prosecuted by Revenue Canada for failure to file. This is a further indication to us that either Mr. Koonar has a blasé disregard for the law or is unduly crafty in trying to avoid his obligations. This adds to our concern that Mr. Koonar be monitored during the time that this cease trade is outstanding.

If during what I am terming the "probationary" period, or indeed after the period, Mr. Koonar breaches the Securities Act again or breaches the cease trade order, I can assure you that the Commission would view that most seriously. We would then be faced with a second offence and the parameters of acceptable sanctions would move dramatically.

One of the difficulties in any decision on sanctions is to determine the message that is being sent to market participants, to members of the public, to staff and to our fellow Commissioners who in the future will be required to determine appropriate sanctions based on precedent.

We realize, in reviewing the cases that counsel for staff of the Commission presented to us, that each case is dependent on its particular facts, and that it is difficult to analogize the facts of this particular case with the precedents. We would be concerned if the ten-year cease trade and the 15-year ban on acting as an officer and director in our case were to be taken out of context and applied as the standard for other cases, especially for contested

hearings. Consequently, we warn, as other Commissioners have warned in other cases, that every situation is fact specific. While what is decided in other cases is helpful, it certainly is not binding in the sense that legal decisions may be.

The settlement agreement in clause 38(a) provides:

> "If for any reason whatsoever this settlement is not approved by the Commission or the order set forth in Schedule A is not made by the Commission, each of the staff and the respondents will be entitled to proceed to a hearing of the allegations in the Notice of Hearing and related statement of allegations unaffected by the settlement agreement or the settlement negotiations, and the respondents agree that such hearing may be held before any or all of the Commissioners of the hearing panel who presided at the hearing to consider this proposed settlement."

We believe that the provision allowing this panel to conduct a contested hearing, if we had rejected the settlement, would be difficult to respect. The difficulty arises, principally, because Mr. Koonar is not represented by counsel. We believe that waiving a procedure is one thing, but waiving a procedure or rule of practice that is designed to protect against the appearance of bias on the part of the Commission is another matter. Generally, one has to be extremely careful about consent to waive a rule to protect against bias where the respondent is representing himself.

We caution that this particular term is one that probably should not find its way into future settlement agreements, or at least should be used only in special circumstances. We ignored it as not being relevant in coming to our decision to approve this settlement agreement as being in the public interest.

Commissioner Shirriff:

As I expressed yesterday, I had considerable difficulty in coming to my decision. The facts of this case which have been agreed to and the conduct that they show I find to be egregious; and it did suggest to me that a lifetime ban on being an officer and director of an issue and a similar ban on trading would be more appropriate.

However, the facts as agreed to did raise questions in my mind which really cannot be answered without a hearing; and what was important to me was the fact that staff has approved putting forth this settlement agreement on these facts. This suggests to me that the answers that might be provided by a hearing could be mitigating.

Consequently, it is with, as I say, some reluctance, and having regard to all of the circumstances, that I see the sanctions contained in the agreement as being within the range of acceptability. And so I concur in the decision. However, I would not want this decision or the order to be taken as a precedent.

I would like to compliment staff on their presentation yesterday which, from my point of view, was very helpful.

Commissioner Adams:

I too feel that the cease trade might have been somewhat longer. But I recognize that we do not have all the facts a full hearing might bring out and we must rely on staff who do have

more facts, although not agreed to, than we have for the proposed sanctions.

I want to reiterate what my two colleagues have said: that because of these circumstances, I would not like to see the ten-year cease trade to be considered as a general precedent. And I would reiterate that a more fulsome hearing and an examination of all of the facts are necessary to reach greater certainty than we've been able to reach in this case.

Vice-Chair Moore:

Thank you, Commissioner Adams. I, too, would like to compliment staff on the presentation, and especially the response to our request for cases to help guide us in this difficult decision. Thank you very much.

Mr. Koonar, would you please stand. Mr. Koonar, on behalf of the Commission panel I am formally reprimanding you for your conduct. It was totally unacceptable and we consider it egregious. We anticipate that you will abide by the cease trade order and the other terms of the order we are making and that in the future we will not have any trouble from you. You may sit down.

Dated as of April 16, 2002

Approved on behalf of the panel

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Paul M. Moore, Vice-Chair