

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

ORDER

(Sections 127 and 127.1)

WHEREAS on August 16, 2001 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of James Frederick Pincock ("Pincock");

AND WHEREAS, following a motion by the respondent to adjourn the hearing dates of this proceeding, the Commission made an Order on July 24, 2002, ordering, among other things, that the respondent provide forthwith an undertaking to the Secretary to the Commission to be marked as Exhibit "A-1" in this proceeding, such undertaking to remain in effect until the final determination of this matter, including any right of appeal, or until further Order of the Commission;

AND WHEREAS Pincock entered into a settlement agreement dated August 23, 2002 (the "Settlement Agreement") in which he agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from the respondent and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

(1) the Settlement Agreement dated August 23, 2002, attached to this Order, is hereby approved;

(2) pursuant to clause 2 of subsection 127(1) of the Act, Pincock shall cease trading in securities for a period of five years effective the date of this Order, with the exception that after three years from the date of the Order, Pincock is permitted to trade in securities beneficially owned by him in his personal accounts in his name;

(3) pursuant to clause 7 of subsection 127(1) of the Act, Pincock shall resign his position as an officer or director of any issuer in Ontario in which he holds the position of officer or

director, and his position as an officer or director of any issuer in Ontario, which has an interest directly or indirectly in any registrant, in which he holds a position of officer or director, effective the date of this Order;

(4) pursuant to clause 8 of subsection 127(1) of the Act, Pincock is prohibited from becoming or acting as an officer or director of any issuer in Ontario or an officer or director of any issuer which has an interest directly or indirectly in any registrant, for a period of five years effective the date of this Order;

(5) pursuant to clause 6 of subsection 127(1) of the Act, Pincock is reprimanded; and

(6) pursuant to subsection 127.1(1)(b) of the Act, Pincock will make payment to the Commission in the amount of \$20,000 by certified cheque or money order in respect of a portion of the costs incurred by the Commission and Staff in relation to this proceeding, such payment to be made at the time of approval of this settlement by the Commission; and

IT IS FURTHER ORDERED THAT the Order herein supercedes the Order made by the Commission dated July 24, 2002.

August 27, 2002.

"Paul M. Moore"

"Robert L. Shirriff"

**IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, C. S.5, AS AMENDED
AND
IN THE MATTER OF
JAMES FREDERICK PINCOCK

SETTLEMENT AGREEMENT**

I INTRODUCTION

1. By Notice of Hearing dated August 16, 2001 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Ontario Securities Act* (the "Act"), in the opinion of the Commission, it is in the public interest for the Commission:

(a) to make an order pursuant to section 127(1) clause 2 of the Act that trading in securities by James Frederick Pincock ("Pincock") cease permanently or for such other period as specified by the Commission;

(b) to make an order pursuant to section 127(1) clause 7 of the Act that Pincock resign one or more positions which Pincock may hold as an officer or director of any issuer;

(c) to make an order pursuant to section 127(1) clause 8 of the Act that Pincock is prohibited from becoming or acting as a director or officer of any issuer permanently or for such other period as specified by the Commission;

(d) to make an order pursuant to section 127(1) clause 6 of the Act that Pincock be reprimanded;

(e) to make an order pursuant to section 127.1 of the Act that Pincock pay the costs of Staff's investigation and the costs of, or related to, this proceeding, incurred by or on behalf of the Commission;

(f) to make such other order as the Commission considers appropriate.

II JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceedings initiated in respect of the respondent by the Notice of Hearing in accordance with the terms and conditions set out below. The respondent agrees to the settlement on the basis of the facts agreed to as hereinafter provided and the respondent consents to the making of an Order in the form attached as Schedule "A" on the basis of the facts set out below.

3. This settlement agreement, including the attached Schedule "A" (collectively, the "Settlement Agreement"), will be released to the public only if and when the settlement is approved by the Commission.

III SETTLEMENT OF FACTS AND CONCLUSIONS

Acknowledgement

4. Staff and the respondent agree with the facts and conclusions set out in Part III of the Settlement Agreement.

Introduction

5. During the period from May 1995 to May 1999, Pincock was the President of Britwirth Investment Company, Ltd. ("Britwirth"), and an officer or director of Fulton Park Limited ("Fulton Park") and Wifsta Ltd. ("Wifsta"). Pincock and his then spouse were the sole shareholders of Britwirth during the material time (as defined below). Pincock has not been registered in any capacity under Act.

6. Britwirth was incorporated pursuant to the laws of the Turks and Caicos Islands, and Fulton Park and Wifsta were incorporated pursuant to the laws of the Isle of Man. Britwirth, Fulton Park and Wifsta have not been registered in any capacity under the Act.

Trading by Pincock Without a Prospectus or Registration Contrary to the Requirements of Ontario Securities Law

7. During the period from May 1995 to May 1999 (the "Material Time"), Pincock traded in securities, where such trading was a distribution of such securities, without having filed a preliminary prospectus and a prospectus, and obtaining receipts therefor from the Director, as required by section 53(1) of the Act, and without registration contrary to section 25(1) of the Act.

8. In particular, Pincock received funds in the amount of at least CAD 1.45 million and at least US \$550,000 from at least 150 investors in Ontario and elsewhere to purchase

securities in at least seven companies, including, Royal Laser Tech Corporation ("Royal Laser"), Champion Communication Services Inc. ("Champion"), Leisure Canada Inc., Indocan Resources Inc., International Menu Solutions Corporation, Pacific Concorde Capital Inc. and Luxell Technologies Inc. (collectively, referred to as the "Companies"). The funds received by Pincock from investors as described above were deposited in accounts in the name of Britwirth, Fulton Park or Wifsta. These accounts were held at several brokerage firms in Ontario. Pincock arranged for these investors to purchase securities in the Companies through pooling and subscription agreements entered into between the investors and Britwirth, Fulton Park or Wifsta (the "Agreements").

9. Subsequent to receiving funds from investors for the purchase of securities in the Companies, Britwirth, Fulton Park and Wifsta, at the direction of Pincock, purchased securities in the Companies. Britwirth, Fulton Park and Wifsta, at the direction of Pincock, then distributed securities in the Companies to the investors who had purchased securities through the Agreements.

10. In relation to the sale of Royal Laser securities to investors by Britwirth, as described above, Britwirth earned commissions in the amount of Cdn. \$139,200.

11. In relation to the sale of Champion securities to investors by Britwirth, as described above, Britwirth earned fees in the amount of U.S. \$81,000.

12. Further, during the Material Time, Pincock, on his own behalf or in his capacity as President of Britwirth, acted as an adviser to investors, or as portfolio manager for the purpose of managing investments on behalf of clients. As stated above, Pincock and Britwirth were not registered in any capacity under the Act.

Conduct Contrary To The Public Interest

13. In summary, during the Material Time, Pincock violated Ontario securities law and engaged in conduct contrary to the public interest, by reason of the following:

(a) Pincock traded in securities, as outlined above, where such trading constituted a distribution of such securities, without filing and obtaining a receipt for a prospectus and without an exemption to the prospectus requirement, contrary to section 53(1) of the Act; and

(b) Pincock traded in securities without registration and without an exemption to the requirement for registration, contrary to section 25(1) of the Act.

IV TERMS OF SETTLEMENT

14. The respondent agrees to the following terms of settlement:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Pincock will cease trading in securities for a period of five years effective the date of the Order of the Commission approving the proposed settlement agreement herein, with the exception that after three years from the date of the Order, Pincock is permitted to trade in securities beneficially owned by him in his personal accounts in his name;

(b) pursuant to clause 7 of subsection 127(1) of the Act, Pincock is required to resign his position as an officer or director of any registrant in which he holds a position of officer or director, his position as an officer or director of any issuer in Ontario, which has an interest directly or indirectly in any registrant, in which he holds a position of officer or director, and his position as an officer or director of any issuer in Ontario in which he

holds a position of officer or director, effective the date of the Order of the Commission approving the proposed settlement agreement herein;

(c) pursuant to clause 8 of subsection 127(1) of the Act, Pincock is prohibited from becoming or acting as an officer or director of a registrant, an officer or director of any issuer in Ontario which has an interest directly or indirectly in any registrant or an officer or director of any issuer in Ontario, for a period of five years effective the date of the Order of the Commission approving the proposed settlement agreement herein;

(d) Pincock undertakes not to apply for registration in any capacity under Ontario securities law for a period of five years;

(e) Pincock agrees to be reprimanded by the Commission under clause 6 of subsection 127(1) of the Act;

(f) pursuant to subsection 127.1(1)(b) of the Act, Pincock will make payment to the Commission in the amount of \$20,000 by certified cheque, in respect of a portion of the costs incurred by the Commission and Staff in relation to this proceeding, such payment to be made at the time of approval of this settlement; and

(g) Pincock will attend, in person, the hearing before the Commission to consider the proposed settlement.

V STAFF COMMITMENT

15. If this Settlement Agreement is approved by the Commission, Staff will not initiate any complaint to the Commission or request the Commission to hold a hearing or issue any order in respect of any conduct or alleged conduct of the respondent in relation to the facts set out in Part III of this Settlement Agreement.

VI PROCEDURE FOR APPROVAL OF SETTLEMENT

16. The approval of the settlement as set out in the Settlement Agreement shall be sought at a public hearing before the Commission in accordance with the procedures described herein and such further procedures as may be agreed upon between Staff and the respondent.

17. If this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting the respondent in this matter and the respondent agrees to waive any right to a full hearing and appeal of this matter under the Act.

18. If this Settlement Agreement is approved by the Commission, the parties to this Settlement Agreement will not make any statement that is inconsistent with this Settlement Agreement.

19. 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:

(a) each of Staff and the respondent 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;

(b) the terms of the Settlement Agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of Staff and the respondent or as may be otherwise required by law; and

(c) the respondent agrees that he will not raise in any proceeding the Settlement Agreement or the negotiation or process of approval thereof as a basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.

20. If, prior to the approval of this Settlement Agreement by the Commission, there are new facts or issues of substantial concern, in the view of Staff, regarding the facts set out in Part III of this Settlement Agreement, Staff will be at liberty to withdraw from this Settlement Agreement. Notice of such intention will be provided to the respondent in writing. In the event of such notice being given, the provisions of paragraph 19 in this part will apply as if this Settlement Agreement had not been approved in accordance with the procedures set out herein.

VII DISCLOSURE OF SETTLEMENT AGREEMENT

21. Staff or the respondent may refer to any part or all of this Settlement Agreement in the course of the hearing convened to consider this agreement. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all parties to the Settlement Agreement until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.

22. Any obligation as to confidentiality shall terminate upon the approval of this Settlement Agreement by the Commission.

VIII EXECUTION OF SETTLEMENT AGREEMENT

23. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

August 23, 2002.

"James Frederick Pincock"

James Frederick Pincock

"Brian Butler"

Staff of the Ontario Securities Commission

Per: Brian Butler