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

– AND –

IN THE MATTER OF
DJL CORP. AND DENNIS JOHN LITTLE
(Section 127)

Hearing: **March 20, 2003**

Panel: **Paul M. Moore, Q.C. - Vice-Chair (Chair of the Panel)**
Derek Brown - Commissioner

Appearances:

Johanna Superina	**-**	**For the Staff of the Ontario Securities Commission**
John Little	**-**	**For Himself**

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 DJL Corp. and Dennis John Little. The transcript has been edited, supplemented and approved by the chair of the panel for the purpose of providing a public record of the panel's decision in the matter. This extract should be read together with the settlement agreement and the order signed by the panel.

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VICE-CHAIR MOORE:

[1] The purpose of this hearing was to consider the proposed settlement agreement between staff of the Commission and the respondents, DJL Capital Corp. (DJL Capital) and Dennis John Little in a matter commenced under sections 127 and 127.1 of the *Securities Act* (the Act).

Facts

[2] DJL Capital was incorporated under the laws of Ontario on August 9, 1993 and carried on business in London, Ontario. It was registered from July 7, 1995 to January 11, 2000 as a limited market dealer pursuant to section 26(1) of the Act. During the material time, DJL Capital was the promoter of units (the Units) of Dual Capital Limited Partnership (the Limited Partnership), and units of DJL Capital.

[3] Little is an individual residing in Ontario and at all material times was the sole director and officer of DJL Capital. Little was registered from July 7, 1995 to January 11, 2000 as the trading officer and director with DJL Capital.

[4] From October, 1994 to December, 1996, Little distributed the Units without having filed a preliminary prospectus and a prospectus as required by section 53(1) of the Act. Dual Capital Management Limited (Dual Capital Management) was the limited partner. During the material time, Dual Capital Management accepted subscriptions for Units from at least 56 members of the public and raised at least US$1,500,500.

[5] The Units were purportedly offered for sale pursuant to the 'seed capital' exemptions in sections 35(1)21 and 72(1)(p) of the Act. The requirements of the exemptions were not satisfied. An offering memorandum dated October 18, 1994, as amended on December 19, 1994, for the Limited Partnership (the Offering Memorandum), was provided to some of the investors who purchased the Units.

[6] The Offering Memorandum represented that DJL Capital would not receive any benefits, directly or indirectly from the issuance of the Units other than as described therein. The Offering Memorandum further represented that DJL Capital would receive payment equal to 4.5% of the 30% rate of return described in the Offering Memorandum. During the material time, DJL Capital received payments from Dual Capital Management in the amount of approximately US$161,525 when Little knew that the source of payments were funds received from investors, and not income earned from any investment made by the Limited Partnership. DJL Capital made payments to Dual Capital Management in the amount of US$97,964.

[7] During the material time, Little sold Units to two investors. The investors paid approximately $130,000 for the purchase of the Units through Little.

[8] On October 26, 2000, in a related prosecution under section 122 of the Act before Mr. Justice Douglas, Dual Capital Management and its two officers, Warren Wall and Shirley Joan Wall, entered pleas of guilty in relation to trading by Dual Capital Management in the Units without being registered to trade in such securities, as required by section 25(1) of the Act, and distributing securities without having filed a prospectus, in contravention of section 53(1) of the Act. Mr. Justice Douglas accepted the pleas, entered convictions and sentenced Warren Wall and Shirley Joan Wall to 30 months and 22 months in prison, respectively, and Dual Capital Management to a fine of $1 million.

[9] In the course of delivering his reasons for sentence on October 30, 2000 [reported at (2001), 24 O.S.C.B. 763], Mr. Justice Douglas stated the following:

> I find that the Roll Programme as conceived, was and remains utter nonsense. The programme considered in and of itself is a fraudulent means.... I find that the Roll Programme was per se dishonest…. Indeed, the evidence is conclusive and nearly complete that all of the investors were neither sophisticated (but naive), nor rich (but poor) or, at least, dependent upon the little money they had.

Analysis

[10] It is important to keep in mind the purpose and principles underlying our Act. Section 1.1 states that the purposes of the Act are to provide protection to investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets.

[11] Section 2.1 of the Act states that in pursuing the purposes set out in section 1.1, the Commission must have regard to certain fundamental principles. One of them is that the primary means for achieving the purposes of the Act include: (i) restrictions on fraudulent and unfair market practices and procedures; and (ii) requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[12] Under section 5(7) of the relevant part of our rules of practice, we had to decide whether or not in our opinion the proposed settlement was appropriate in the public interest. In doing this, we

took into account not only the effect of the proposed order upon the respondents but the prophylactic purpose that can be served by deterring conduct by others that is likely to be prejudicial to the public interest. And we kept in mind the statement in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610, that:

> The role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently of temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section [122] of the Act.

[13] The Commission went on to say, at 1610-1611:

> We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest and having Capital markets that are both fair and efficient. In so doing, we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all. And in so doing, we may well conclude that a person's past conduct that has been so abusive of the capital markets as to warrant our apprehension and intervention, even if no particular breach of the Act has been made out.

[14] We also took into account *Re Dornford* (1998), 21 O.S.C.B. 7499, and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 (*Belteco*).

[15] As pointed out in *Belteco* at 7746, there are a number of factors that we should consider in assessing sanctions, including:

> (a) the seriousness of the allegations;
>
> (b) the respondents' experience and level of activity in the marketplace;
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> (c) whether or not there has been a recognition of the seriousness of the improprieties; and
>
> (d) whether or not the sanctions imposed may deter not only those involved, but also any like-minded people, from engaging in similar conduct.

[16] Further, as this Commission noted in *Re Sohan Singh Koonar* (2002), 25 O.S.C.B. 2691, in considering whether or not to approve a settlement agreement, the Commission need not be satisfied

that the sanctions proposed are the sanctions it would have imposed. Rather, in determining whether a proposed settlement is appropriate in the public interest, our role is to be satisfied that, in all the circumstances, the agreed sanctions are within an acceptable range of sanctions that would serve the public interest.

[17] The integrity of our capital markets requires that those who sell securities comply fully with Ontario securities law. The respondents have admitted serious violations of Ontario securities law and other conduct contrary to the public interest, including the following:

> (i) Little traded in the Units, and units of DJL Capital, without being registered, contrary to section 25(1) of the Act;
>
> (ii) Little traded in the Units, and units of DJL Capital, which constituted a distribution without a prospectus, contrary to section 53(1) of the Act;
>
> (iii) Little, in his capacity as the sole officer of DJL Capital, prepared promotional material which contained false and misleading representations to investors of the Units, and units of DJL Capital, as described above;
>
> (iv) Little failed to disclose to investors that investors' funds in respect of the units were issued to fund payments to DJL Capital and/or Little;
>
> (v) Little failed to disclose to investors that investors' funds in respect of the DJL Capital units were used to make payments to Little and were also deposited into the account of a company carrying on the business of providing board and care for horses; and
>
> (vi) Little failed to assess the suitability of the Units sold by Little to the needs of the investors.

[18] The respondents' conduct demonstrated a blatant disregard for Ontario securities law, undermined the integrity of our capital markets and eroded investor confidence in them. As such, the conduct has been contrary to the public interest.

[19] The sanctions provided for will remove Little from the capital markets on a permanent basis. This is necessary to protect the capital markets and investors in this case.

[20] Approval of the settlement agreement will send a clear message from the Commission to Little and other participants in the capital markets that misconduct of this nature will be treated very seriously by the Commission.

[21] The sanctions agreed to by staff and the respondents are appropriate in the public interest, as they are commensurate with the seriousness of the respondents' misconduct, provide significant public censure of such misconduct, and will act as a specific and general deterrent.

[22] Accordingly, we approve the settlement agreement as being appropriate in the public interest.

[23] I would like to thank counsel for staff for an excellent written submission which has been very helpful to us.

Reprimand

[24] Mr. Little, would you please stand? You've heard my comments on the egregious nature of your conduct?

MR. LITTLE:

[25] I have.

VICE-CHAIR MOORE:

[26] You are hereby reprimanded.

Approved by the chair of the panel on March 27, 2003.

"Paul M. Moore"