

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

AND

**IN THE MATTER OF
PATRICK FRASER KENYON PIERREPONT LETT,
MILEHOUSE INVESTMENT MANAGEMENT LIMITED,
PIERREPONT TRADING INC.,
BMO NESBITT BURNS INC., JOHN STEVEN HAWKYARD
AND JOHN CRAIG DUNN**

**REASONS FOR SANCTIONS ORDERED AGAINST PATRICK FRASER
KENYON PIERREPONT LETT, MILEHOUSE INVESTMENT
MANAGEMENT LIMITED AND PIERREPONT TRADING INC.**

1. This was a bifurcated hearing in which it was first determined that the respondents traded in securities contrary to section 25(1)(c) of the *Ontario Securities Act* (the “Act”), (see reasons dated 18th March 2004 the “Reasons”) and that sanctions under section 127(1) of the Act should be ordered.
2. Following the release of the Reasons, submissions in writing were received from Staff and on behalf of the respondents as to what sanctions should be ordered.
3. After considering those submissions, we issued sanctions on May 7, 2004 with reasons to follow. These are those reasons.
4. The sanctions directed were the following:
 - Pursuant to clause 2 of subsection 127(1) of the Act, Milehouse and Pierrepont will cease trading in securities for a period of 15 years.

- Pursuant to clause 2 of subsection 127(1) of the Act, Lett will cease trading in securities for a period of 10 years provided that during this period, Lett may trade in certain securities for his own account or for the account of his registered retirement savings plan or registered retirement income fund (as defined in the *Income Tax Act (Canada)*) if:
 - a) the securities are securities referred to in clause 1 of subsection 35(2) of the Act; or
 - b) in the case of securities other than those referred to in the foregoing paragraph a):
 - i) the securities are listed and posted for trading on The Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges); and
 - ii) Lett does not own directly, or indirectly through another person or company or through any person or company acting on his behalf, more than one (1) percent of the outstanding securities of the class or series of the class in question;
 - c) for all personal trading Lett must carry out permitted trading through accounts opened in his name only and must close any accounts in which he has any beneficial ownership or interest that were not opened in his name only.
- Pursuant to clause 7 of subsection 127(1) of the Act, Lett resign any positions he holds as an officer or director of any reporting issuer or any issuer which is a registrant or any issuer which has any interest directly or indirectly in a registrant.
- Pursuant to clause 8 of subsection 127(1) of the Act, Lett be prohibited from becoming or acting as an officer or director of any reporting issuer or an officer or director of a registrant or any issuer which has an interest directly or indirectly in any registrant for a period of 15 years.
- Pursuant to clause 6 of subsection 127(1) of the Act, the Respondents will be reprimanded.
- Pursuant to section 127(2) of the Act, Lett shall pay the costs of Staff's investigation and the hearing in the amount of \$150,000.

5. As set out in the Reasons, the evidence at the initial hearing was that a group of investors deposited over (U.S.) \$20 million in accounts of the respondents. During the relevant time, Lett was the president and directing mind of both corporate respondents.

6. The monies were deposited with the respondents for the purpose of having them invest in high-yield programs. The monies were accepted by the respondents and they took steps

to access high-yield programs. The high-yield programs were said to yield profits in the range of 100%-400% which were to be shared with the respondents and with those who provided the funds.

7. In support of its submissions on sanctions, Staff filed, pursuant to section 139 of the Act, a certificate concerning records of the Ontario Securities Commission from May 23, 1989 to 1995.

8. The certificate disclosed not only that the respondent Lett had been previously registered in various capacities under the Act between 1989 and 1995 but also that in 1993 his then registration was suspended by the Commission for a period of six months subject to certain conditions.

9. In its submissions, Staff submitted that the sanctions should be in the following range:

- (a) that pursuant to clause 2 of subsection 127(1) of the Act, Lett, Milehouse and Pierrepont would permanently cease trading in securities;
- (b) that pursuant to clause 7 of subsection 127(1) of the Act, Lett resign any positions he holds as an officer or director of any reporting issuer or any issuer which is a registrant or any issuer which has any interest directly or indirectly in a registrant;
- (c) that pursuant to clause 8 of subsection 127(1) of the Act, Lett be prohibited from becoming or acting as an officer or director of any reporting issuer or an officer or director of a registrant or any issuer which has as an interest directly or indirectly in any registrant.

10. Counsel for the respondent submitted that appropriate sanctions would be:

- (a) an order that trading in securities by Lett cease for a period of two years, with the exception that Lett be permitted to trade in securities;
 - (i) in personal accounts in his name in which he has a sole beneficial interest;
 - (ii) in registered retirement savings plans in which he, either alone or with his spouse, has sole beneficial interest;

- (b) an order that the respondents be reprimanded;
- (c) an order that Lett be prohibited from becoming or acting as an officer or director of any issuer.

11. In *Gregory & Co. v. Quebec (Securities Commission)* 28 D.L.R. (2d) 721 at p.725, [1961] S.C.R. 584 at p.585, the Supreme Court of Canada discussed the object of the requirement for registration in order to trade in securities:

The paramount object of the Act is to ensure that persons who, in the Province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the Province or elsewhere, from being defrauded as a result of certain activities initiated in the Province by persons who therein carry on such a business. For the attainment of this object, trading in securities is defined in section 14; registration is provided in section 16 as a requisite to trading securities...

12. The Commission has held that general deterrence can be taken into account in determining what is necessary to restrain conduct by others that is likely to be prejudicial to the public interest in having capital markets that are fair and efficient. See *Donnini (Re)* (2002), 25 O.S.C.B. 6225 at paragraph 178.

13. This use of general deterrence has been approved by the Supreme Court of Canada in its recent decision *Re Cartaway Resources Corp.*, [2004] S.C.J. No. 22.

14. Having regard to what is disclosed in the section 139 certificate, Lett should either have known that registration was required or at least have known that he should have made the requisite inquiries as to whether the activities in which he was intending to embark necessitated that he be registered under the Act.

15. Lett offered no explanation for his failure to so act.

16. Taking all of this into account, including the written submissions received from counsel, we determined that it was in the public interest to issue the sanctions which were released on May 7, 2004.

17. As to costs, Staff submitted a detailed brief in support of its request that costs be set in the amount of \$258,569.50.

18. Counsel for the respondents submitted that the costs should be fixed at \$100,000. In support of that, his position was that the costs should be fair and reasonable in the circumstances and reference was also made to the fact that the respondents had agreed to a Statement of Agreed Facts which resulted in there being a much shorter hearing than would otherwise have been necessary.

19. We agreed with those submissions and determined that \$150,000 was an appropriate amount for costs and so ordered.

Dated at Toronto this 8th day of June, 2004.

“H. Lorne Morphy”

H. Lorne Morphy, Q.C. , Commissioner

“M. Theresa McLeod”

M. Theresa McLeod, Commissioner

“Suresh Thakrar”

Suresh Thakrar, Commissioner