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

– AND –

IN THE MATTER OF FOREIGN CAPITAL CORPORATION,
MONTPELLIER GROUP INC. and PIERRE ALFRED MONTPELLIER

Hearing: February 25, 2005

Ontario Securities Commission Panel:

Paul M. Moore, Q.C.	-	Vice-Chair (Chair of the Panel)
Suresh Thakrar	-	Commissioner
Wendell S. Wigle, Q.C.	-	Commissioner

Counsel:

Alexandra Clark Colin McCann James Alexis Levine (student-at-law)	-	For the Staff of the Ontario Securities Commission
Pierre Alfred Montpellier	-	For Foreign Capital Corporation
Pierre Alfred Montpellier	-	For Montpellier Group Inc.
Pierre Alfred Montpellier	-	Self-represented

REASONS

I. Proceeding

[1] This proceeding was a hearing under section 127(1) of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act") to consider whether it is in the public interest for the Commission:

i) to make an order terminating the registration of Pierre Alfred Montpellier ("Montpellier") under Ontario securities law;

ii) to make an order that Foreign Capital Corporation, Montpellier Group Inc. and Montpellier cease trading in securities, permanently or for such time as the Commission may direct;

iii) to make an order that Foreign Capital Corporation, Montpellier Group Inc. and Montpellier be reprimanded;

iv) to make an order that Montpellier be required to resign all positions that he holds as a director or officer of an issuer;

v) to make an order that Montpellier be prohibited from becoming or acting as director or officer of an issuer permanently or for such time as the Commission may direct;

vi) to make an order that Foreign Capital Corporation, Montpellier Group Inc. and Montpellier pay the costs of the investigation and the costs of the hearing in this matter; and

vii) to make such other order as the Commission may deem appropriate.

[2] Montpellier Group Inc. was incorporated under the laws of Ontario on August 14, 1995 and had a registered office in Sudbury, Ontario. There is no record of Montpellier Group Inc. having been registered under the Act.

[3] Foreign Capital Corporation was incorporated under the laws of Ontario on September 28, 1995 and had a registered office in Chelmsford, Ontario. There is no record of Foreign Capital Corporation having been registered under the Act.

[4] Montpellier is an individual residing in Ontario and at all material times was the sole director and officer of Foreign Capital Corporation and Montpellier Group Inc. Montpellier was registered with Regal Capital Planners Ltd., a dealer in the categories of mutual fund dealer, limited market dealer and scholarship plan dealer, as a salesperson from June 17, 1994 to December 10, 1998.

II. Request for Adjournment

[5] Montpellier was not represented by counsel at the hearing.

[6] At the start of the hearing, Montpellier requested an adjournment in order to obtain the services of counsel.

[7] Staff did not oppose the request for an adjournment on the condition that a fixed date of return be scheduled for the hearing.

[8] Since December, 2004, Montpellier and staff had had several discussions concerning the sanctions sought and a possible resolution of the matter. On the afternoon of February 23, 2005, Montpellier informed staff for the first time that he wanted to retain counsel.

[9] Despite having notice of the hearing since January 20, 2005, at least, Montpellier communicated to staff his desire to be represented by counsel only two days before the hearing date. We were concerned that Montpellier was not diligent in trying to retain counsel and that this was a last-minute ploy to delay the proceedings.

[10] Staff referred the panel to *R. v. Smith,* 52 C.C.C. (3d) 90 (1989) (Ont. C.A.) (*Smith*) and *R. v. Norris*, [1993] O.J. No. 1232 (Ont. C.A.) (*Norris*).

[11] In *Norris*, Blair J.A., relying on *Smith*, stated:

> This court has held that representation by counsel is generally essential to a fair trial. It has also held that where an accused person desires to be defended by counsel then, unless the accused has deliberately failed to retain counsel or has discharged counsel with the intent of delaying the process of the court, the court should afford the accused a reasonable opportunity to retain counsel. See Regina v. Smith 52 C.C.C. (3d) 90 at pp. 92-93.
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> …
>
> We recognize the inconvenience which an adjournment on September 4, 1991, would have caused to the court, to its scheduling and to the jurors and witnesses who had been summoned for the trial. Nevertheless, it is our view that a fair trial for the appellant outweighed that inconvenience. Regrettably, this case will have to be retried.

[12] After careful consideration, we distinguished the situation before us from *Norris* and *Smith*.

[13] The hearing before us was not a criminal hearing. It was not a trial of innocence or guilt. It was a hearing into whether it would be in the public interest to make orders under section 127 of the Act based on conduct that was not in dispute – conduct that had been the subject matter of criminal proceedings.

[14] We took note that staff intended only to call a witness to introduce documentary evidence and that cross-examination would not be a factor in testing the evidence. The

hearing was to be about appropriate sanctions based on conduct that had been the subject matter of criminal proceedings. The conduct in question was not in dispute.

[15] Montpellier's criminal hearing took place on April 14, 2004, before Madam Justice Gauthier of the Ontario Superior Court of Justice, where Montpellier entered a plea of guilty to defrauding 128 investors in Foreign Capital Corporation of $5,347,300.00 contrary to section 380(1)(a) of the *Criminal Code of Canada*, R.S. 1985, c. C-46 (the "Code") and to having stolen that amount of money from the same 128 investors contrary to section 334(a) of the Code.

[16] Madam Justice Gauthier accepted that plea, entered convictions, and sentenced Montpellier to a further 2 years incarceration in a federal institution. Coupled with the 2.5 years of pre-trial incarceration that he already served, Montpellier was sentenced to a total of 4.5 years of incarceration.

[17] In passing her sentence, Madam Justice Gauthier made the following remarks:

> I have taken into account the lavish and luxurious lifestyle this accused enjoyed as a result of his offences. He may only be able to imagine the anxiety, the pain and perhaps the real fear…for which he is responsible. Likewise, for many of the victims they too can only imagine what it might be like to wear fine clothing, to drink champagne and to otherwise have such a luxurious lifestyle that this accused person enjoyed.
>
> I have considered the loss sustained by the victims of these offences. The victims here are numerous, they come from all walks of life. There were many elderly people. People with compromised health, people who had lost their spouse, all those people had their trust betrayed. There were people with limited or fixed incomes who turned to the accused to act in their best interests with all the money they had or all the money which the accused encouraged them to borrow.
>
> I have considered that the breach of trust involved not only the 128 investors, but the members of this community generally. The breach of trust committed by Mr. Montpellier was that of a person who was an integral part of the business community and who was entrusted with large amounts of money, for some, their entire life's savings. The effect on the members of the community generally is a negative one.

[18] To respect the rules of natural justice and Montpellier's right to a fair hearing, we decided that the most appropriate procedure would be to proceed with the hearing as scheduled, and to allow Montpellier to enter a written submission.

[19] We directed staff to present its entire case and allowed Montpellier to make comments and ask questions of staff's witness. We advised Montpellier that we would reserve judgment until March 31, 2005 at least.

[20] We invited Montpellier to submit a written submission by March 31, 2005. If he chose to be represented by counsel, then he could retain counsel and have his counsel file a written submission before March 31, 2005. We advised that if a written submission

were to be put in, we would give staff ten days to reply and would reserve judgment at least until then.

[21] Montpellier did not retain counsel, but did file a written submission on March 31, 2005. Staff submitted a reply on April 11, 2005.

III. Transcript as Proof of Criminal Conviction

[22] Staff called Colin McCann, an investigator in the enforcement branch of the Commission, as a witness to introduce into evidence various documents, including a transcript of the Superior Court of Justice in *R*. v. *Pierre Montpellier* before Madam Justice Gauthier held on April 14, 2004 (the "Transcript").

[23] Staff was entitled to rely on the Transcript (in which Montpellier entered the guilty plea) as evidence of Montpellier's admission of the facts which he admitted in the criminal proceeding. Staff was also entitled to rely on Montpellier's conviction as proof of the facts which supported the conviction. See *Woods, Re* (1995), 18 O.S.C.B. 4625 at 4626, and section 15.1 of the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22, as amended.

[24] We have carefully considered Montpellier's submissions. They attempt to disprove facts that were established in Montpellier's guilty plea. The majority of the documents attached to Montpellier's submission were of little assistance in determining appropriate sanctions. The submissions do not successfully challenge the evidence led by staff and we find that staff has proved the facts asserted in its statement of allegations.

IV. Basis for Sanctions

[25] The Commission's jurisdiction under section 127 of the Act is to be exercised in a protective and preventative manner. As stated in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611:

> [u]nder sections 26, 123, and 124 of the Act, the role of this Commission is to protect the public interest by removing from the capital market – wholly or partially, permanently or 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 the capital markets. We are not here to punish past conduct: that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in 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.

[26] A respondent's past criminal conduct may be an important indicator of the need for protective action. In particular, criminal conduct in securities-related matters may call for "a vigorous package of preventative sanctions". See *Re Banks* (2003), 26 O.S.C.B. 3377 (*Banks*) and *Re Kinlin* (2000), 23 O.S.C.B. 6535 (*Kinlin*).

[27] Where an individual respondent has engaged in egregious conduct, it may be appropriate to constrain their personal trading. See *Kinlin*.

[28] Where impugned conduct involves actions undertaken as a director or officer of an issuer, sanctions removing a respondent from these roles will often be appropriate. See *Banks*.

[29] The respondent in *Banks* pleaded guilty in the State of New York to having intentionally engaged in a scheme constituting a systematic ongoing course of conduct with intent to defraud, was sentenced to five years of unsupervised probation, and was ordered to pay restitution of US$400,000 to injured persons, as well as, a US$100,000 fine.

[30] The Commission stated at paragraph 126 of *Banks*:

> This was criminal conduct and it was securities-related. This conduct arose in Banks' capacity as a director and officer of an issuer. Together with his conduct in connection with the Roll Program, the criminal conduct demonstrated to us that Banks should be restricted from acting as a director or officer of any issuer, and be prevented from participating in our capital markets.

[31] And further, at paragraphs 129 and 130 of *Banks*:

> His indifference to the foreseeable consequences to others in the marketplace, together with his singular focus on the monetary benefit that LFI hoped to secure for itself, convinced us that he should be removed from our markets. We are therefore also ordering, pursuant to paragraph 2 of subsection 127(1), that Banks cease trading in securities permanently.

[32] The respondent in *Kinlin* pleaded guilty before the Ontario Court of Justice to 28 counts of fraud over $5,000 contrary to the *Code*, was sentenced to five years imprisonment, and was ordered to make restitution in the amount of $12,582,820.00 to 63 victims. The Commission referred to *Slipetz, Re* (2000), 23 O.S.C.B. 5322, as support for its statement at paragraph 4:

> We agree with Mr. Justice Porter that the Respondent's conduct was "despicable". He encouraged his clients to rely on him to invest their money in their best interest, and then, in the face of his fiduciary obligations to them, made off with their money, which he used for his own purposes. The amounts involved were substantial, and the effect on those who he led to put their trust in him, and who did so, was devastating.

[33] With respect to the respondent's ability to trade in securities and through a registered dealer for the account of his RRSP, the Commission stated at paragraphs 7 and 8 of *Kinlin*:

> Staff has argued that the Respondent's conduct was so egregious that we should conclude that he should never be trusted to again trade in securities, and that, for the protection of investors and the marketplace, it is necessary for us to order that trading in any securities by the Respondent cease permanently. We agree that the Respondent's actions have made it clear that he should never again be trusted to participate in the markets of this province.

We considered, however, permitting the Respondent to trade through a registered intermediary for the account of a registered retirement savings plan of which he was the sole beneficiary. However, Staff has referred us to the Commission's decision in *Andrus, Re* (1998), 21 OSCB 4777 (Ont. Securities Comm.) at 4784, where the Commission said, in dealing with a request to permit a respondent, whose conduct had been found to be egregious, to continue to engage in certain personal trading:

> It is therefore for the panel to weigh the facts demonstrated in the case and decide how far it is appropriate to go in limiting the future activities of a respondent to protect the public interest.
>
> Although excessive regulation should be avoided, when a danger to the public is demonstrated through egregious conduct, as in the present case it is better to be on the side of safety. Accordingly, we order that trading in any securities by Andrus cease permanently.

We agree. The Respondent's conduct in this case was certainly egregious. As we have said, it was despicable. In our view, we should, like the panel in *Andrus*, err on the side of safety, safety of investors and the marketplace.

Accordingly, we order, pursuant to paragraph 127(1)2 of the *Securities Act,* that trading in any securities by the Respondent cease permanently.

[34] In *First Federal Capital (Canada) Corp., Re* (2004), 27 O.S.C.B. 1603 (*Friesner*), the respondents, Friesner and his company, solicited a trading program in investment contracts in contravention of Ontario securities law. Friesner had an extensive criminal record involving fraud stemming back to 1969.

[35] The Commission ordered in *Friesner* that the respondents cease trading in securities permanently, that Friesner resign from all positions that he held as officer or director of an issuer, and that he be prohibited from becoming or acting as an officer or director of an issuer in the future. In deciding whether to order a reprimand, the Commission stated at paragraph 79 of *Friesner*:

> We have not specifically ordered a reprimand of the respondents. In our view, the severity of the sanctions we are ordering speak for themselves and express the view of the Commission that the conduct of the respondents was reprehensible.

[36] The respondents, Warren Wall and Joan Wall (the "Walls"), in *Dual Capital Management Limited et al., Re* (2003), 26 O.S.C.B. 4932 (*Dual*), entered guilty pleas before the Ontario Court of Justice, to defrauding 56 members of the public of approximately US$1.5 million by means of an investment scheme, and were sentenced to 30 months and 22 months respectively. The respondent Dual Capital Management Limited was fined $1 million.

[37] The respondents in *Dual* entered into a settlement agreement with the Commission where they agreed that they traded in securities contrary to the requirements of Ontario securities law and made misrepresentations to investors contrary to the public interest.

[38] The respondents in *Dual* agreed: to cease trading in securities permanently with the exception that after one year from the date of the order, the Walls were permitted to

trade securities through a registered dealer for the account of their RRSPs, that the Walls should resign their positions as officers or directors of any reporting issuer and be prohibited permanently from becoming or acting as an officer or director, save and except any position which they may hold as an officer or director of any private issuer incorporated by themselves to provide services solely in the construction industry, and that the Walls be reprimanded by the Commission.

[39] The facts in *DJL Capital Corp. and Dennis John Little, Re,* (2003), 26 O.S.C.B. 2494 (*DJL*), are similar to *Dual*'s. In *DJL*, the respondents agreed to terms of settlement similar to those outlined in *Dual,* with two notable distinctions: first, the respondent's RRSP carve-out was after a five-year term rather than a one-year term, and second, the Commission made no order as to the ability of the respondent to become an officer and director of a corporation that runs a specific line of business since the respondent presented no such concrete proposal for review.

V. Sanctions In This Case

[40] We accept Madam Justice Gauthier's disapproving view of Montpellier's conduct, and his negative effect on the victims and the community.

[41] While holding himself out as an investment professional who could be relied on to provide disinterested investment advice, Montpellier sought and obtained the trust of 128 investors. Then, for nearly three years, he took advantage of and cheated them by his unfair, dishonest and bad faith dealings in running an illegal "Ponzi scheme", thus rendering them victims while he self-indulged at their expense.

[42] There is no doubt that Montpellier's past criminal conduct in securities-related matters is so egregious as to warrant the Commission taking protective action and ordering a vigorous package of preventative sanctions.

[43] As discussed in *DJL*, section 2.1 of the Act states that in pursuing the purposes set out in section 1.1 of the Act, 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.

[44] As stated in *Re Belteco Holdings Inc*. (1998), 21 O.S.C.B. 7743, the Commission should consider a number of factors in assessing sanctions, including:

(a) the seriousness of the allegations;

(b) the respondents' experience and level of activity in the marketplace;

(c) whether or not there has been 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.

[45] Montpellier's egregious conduct goes to the very essence of the duties and responsibilities of a registrant under the Act. His contravention of obligations under the Act is illustrative of a most grave type of a failure by a registrant.

[46] Montpellier's conduct and its consequences are consonant with the Commission's statement in *In the Matter of Paul John Rockel* (1966), O.S.C.B. 6 at 7:

> The Commission recognizes that the cancellation of registration is a severe economic penalty, generally a penalty to be applied in cases where the public itself has been abused or where it is clear that a man's moral standard is such that he cannot be trusted to trade in securities, which experience has shown to be a business subject to great temptation.

[47] Montpellier's debt to society has been addressed through the criminal system and through his incarceration. However, from a protective and prophylactic perspective, we cannot be satisfied that absent the orders we are making, Montpellier would not improperly act again, given the opportunity.

[48] We have serious concerns that if Montpellier is permitted to continue as an active participant in the capital markets, he will continue to display an indifference for Ontario securities law, and the policies behind it. His disregard of the foreseeable consequences of his conduct to marketplace participants and his monetary greed, convinced us that if we do not restrain Montpellier properly, confidence in our markets would be weakened.

[49] In this regard, we have considered closely Montpellier's and staff's submissions with respect to permitting Montpellier a carve-out from the cease trade order to engage in personal trading through a registered intermediary for the account of a RRSP of which Montpellier is the sole beneficiary.

[50] Participation in our markets "is a privilege and not a right". See *Erikson* v. *Ontario (Securities Commission)*, [2003] O.J. No. 593 (Ont. Div. Ct.) at para. 56.

[51] The Commission quite often grants an RRSP carve-out from a cease trade order in the case of non-criminal activity, but treats a carve-out with a jaundiced eye where securities fraud and questions of trust are the subject matter of the conduct. This is especially so when the respondent's conduct has been egregious. See *Kinlin*.

[52] While *DJL* and *Dual* are exemplary of the Commission granting a carve-out, we note that both decisions stem from a consensual resolution between the parties. As the Commission remarked in *Re Sohan Singh Kooner* (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, the Commission's 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.

[53] Given Montpellier's conspicuously offensive conduct, we are not prepared to allow a carve-out.

[54] As in *Banks*, Montpellier's conduct arose in his capacity as the sole officer and director of the corporations used in his schemes. Montpellier's criminal conduct demonstrated that Montpellier should be restricted from acting as a director or officer of any issuer and be prevented from participating in our capital markets.

VI. The Order

[55] Accordingly, being of the opinion that it is in the public interest to do so, we are ordering that:

i) pursuant to clause 1 of section 127(1) of the Act, Montpellier's registration be terminated;

ii) pursuant to clause 2 of section 127(1) of the Act, trading in any securities by Foreign Capital Corporation, Montpellier Group Inc. and Montpellier cease permanently;

iii) pursuant to clause 7 of section 127(1) of the Act, Montpellier resign from all positions that he holds as director or officer of an issuer; and

iv) pursuant to clause 8 of section 127(1) of the Act, Montpellier be prohibited from becoming or acting as a director or officer of any issuer.

[56] Staff indicated that it would not be seeking costs, as, in light of the nature of this proceeding, which is driven by Montpellier's criminal conviction, there have not been the type of investigative costs that are traditionally associated with a matter in which staff deals from beginning to end. Accordingly, we make no order as to costs.

Dated at Toronto this 15th day of April, 2005.

"Paul Moore"
Paul M. Moore

"Suresh Thakrar"
Suresh Thakrar

"Wendell S. Wigle"
Wendell S. Wigle