IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, as amended (the "Act")

- and -

IN THE MATTER OF

PHILIP SERVICES CORP.,
ALLEN FRACASSI, PHILIP FRACASSI,
MARVIN BOUGHTON, GRAHAM HOEY,
ROBERT WAXMAN AND JOHN WOODCROFT

HEARING:	March 3, 2006	
PANEL:	Paul Bates	Commissioner (Chair of the Panel)
	Suresh Thakrar	Commissioner
COUNSEL:	Karen Manarin	For Staff of the Commission
	Judy Cotte	
	Joseph Groia	For the Respondents
	Robert Brush	
	Kellie Seaman	

REASONS FOR ORDER

I. The Proceeding

[1] This was a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) to consider whether it was in the public interest to approve a settlement agreement (the “Settlement Agreement”) entered into between Staff of the Commission ("Staff") and Allen Fracassi ("A. Fracassi"), Philip Fracassi ("P. Fracassi"), Marvin Boughton ("Boughton"), Graham Hoey ("Hoey") and John Woodcroft ("Woodcroft") (collectively, the "Respondents").

[2] At the hearing, we heard submissions from counsel for the Respondents and from Staff. Upon being satisfied that it was in the public interest to approve the Settlement Agreement, we made an order on March 3, 2006. Our Order provided that:

(i) pursuant to clause 6 of subsection 127(1) of the Act, the Respondents be reprimanded by the Commission;

(ii) pursuant to clause 7 of subsection 127(1) of the Act, the Respondents immediately resign any positions that they each hold or may hold as a director or officer of any reporting issuer;

(iii) pursuant to clause 8 of subsection 127(1), Allen Fracassi be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of twelve years commencing on the date that the Settlement Agreement is approved;

(iv) pursuant to clause 8 of subsection 127(1), Philip Fracassi be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of ten years commencing on the date that the Settlement Agreement is approved;

(v) pursuant to clause 8 of subsection 127(1), Marvin Boughton be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of ten years commencing on the date that the Settlement Agreement is approved;

(vi) pursuant to clause 8 of subsection 127(1), John Woodcroft be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of ten years commencing on the date that the Settlement Agreement is approved;

(vii) pursuant to clause 8 of subsection 127(1), Graham Hoey be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of five years commencing on the date that the Settlement Agreement is approved; and

(viii) pursuant to section 127.1 of the Act, each of the Respondents pay costs to the Commission in the amount of $100,000 (for total costs to be paid of $500,000).

[3] These are the reasons for our decision to approve the Settlement Agreement.

II. Agreed Facts and Admissions

[4] In making our decision to approve the Settlement Agreement, we relied on the facts and conclusions agreed upon by Staff and the Respondents which were set out in Part III of the Settlement Agreement.

III. The Commission's Public Interest Mandate

[5] The Commission's mandate in upholding the purposes of the Act is set out at section 1.1:

(i) to provide protection to investors from unfair, improper or fraudulent practices; and

(ii) to foster fair and efficient capital markets and confidence in capital markets.

[6] This case involved the failure by the Respondents to ensure that Philip Services Corp. filed financial statements in the Prospectus that contained full, true and plain disclosure. In accordance with paragraphs 2.1(2)(i) and (iii) of the Act, the Commission is guided by certain fundamental principles in pursuing the purposes of the Act, including the "requirements for timely accurate and efficient disclosure of information" and the "requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants".

[7] Disclosure is the cornerstone principle of securities regulation. All persons investing in securities should have equal access to information that may affect their investment decisions. The Act's focus on public disclosure of material facts in order to achieve market integrity would be meaningless without a requirement that such disclosure be accurate and complete and accessible to investors (see *Pacific Coast Coin Exchange of Canada v. Ontario (Securities Commission*, [1978] 2 S.C.R. 112).

[8] The role of the Commission in exercising its public interest jurisdiction is set out in *Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at pp.1610-1611:

> … the role of this Commission is to protect the public interest by removing from the capital markets – 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 those 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.

IV. Appropriate Sanctions

[9] As stated in *Re Sohan Singh Koonar et al.* (2002), 25 O.S.C.B 2691, the role of a Commission 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.

[10] Appropriate sanctions should be determined by considering the specific circumstances of the case at issue and be proportionate. As set out in *Re M.C.J.C. Holdings and Michael Cowpland* (2002), 25 O.S.C.B. 1133 at 1134 (Carswell):

> We have a duty to consider what is in the public interest. To do that, we have to take into account what sanctions are appropriate to protect the integrity in the marketplace…
>
> In doing this, we have to take into account circumstances that are appropriate to the particular respondents. This requires us to be satisfied that proposed sanctions are proportionately appropriate with respect to the circumstances facing the particular respondents.

[11] We have considered the proposed sanctions as a whole, and in applying the principles set out above, we found that the Settlement Agreement entered into by A. Fracassi, P. Fracassi, Boughton, Hoey and Woodcroft and Staff of the Commission was in the public interest.

[12] The Respondents' admissions eliminated the need for a full hearing and their agreement to pay collectively $500,000 towards costs of the investigation defrayed the Commission of these costs.

[13] In approving these sanctions, we were mindful that they had to be in the public interest and commensurate with each respondent's degree of responsibility. We were of the view that the sanctions were so proportionate.

[14] We have also taken into consideration the fact that the Respondents have suffered damage to their reputation in the community throughout this hearing process.

[15] Each of the Respondents attended the settlement hearing and was publicly reprimanded when the decision to approve the Settlement Agreement was made.

[16] As mitigating factors, we noted the fact that all of the Respondents remained employed with Philip after the matters that form the subject-matter of the Notice of Hearing came to light and

continued in their respective roles for substantial periods of time, during which they each fully cooperated with and assisted in investigations conducted by an independent committee of the Board and by Philip's lenders; and worked diligently to effect a restructuring of Philip pursuant to the *Companies' Creditors Arrangements Act* and Chapter 11 of the U.S. Bankruptcy Code in order to maximize recovery value for all stakeholders of Philip. The Respondents' continued involvement with Philip's business and affairs was all with the full support of the restructured Board and stakeholders of Philip.

[17] By entering into this Settlement Agreement, the Respondents have recognized the seriousness of their misconduct.

[18] Finally, we noted that a cease-trade order was not included as part of the Settlement Agreement. Staff explained that there was no conduct in this matter involving illegal or inappropriate trading, and as such a cease-trade order was not considered appropriate. Secondly, Staff's review of analogous case law did not indicate that the imposition of cease-trade orders would be appropriate in these circumstances. We accepted Staff's position.

V. Conclusion

[19] For these reasons, we were satisfied that the sanctions were in the public interest and approved the Settlement Agreement.

Dated at Toronto this 8th day of May, 2006.

"Paul K. Bates"	"Suresh Thakrar"
Paul K. Bates	Suresh Thakrar