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

- and -

IN THE MATTER OF
ANDREW OESTREICH

REASONS FOR DECISION
(Sections 127 and 127.1)

Hearing: June 29, 2006.

Panel:	Paul M. Moore, Q.C	-	Vice-Chair (Chair of the Panel)
	Suresh Thakrar	-	Commissioner
Counsel:	Karen Manarin	-	On behalf of Staff of the Ontario Securities Commission
	Andrew Oestreich	-	On his own behalf

REASONS FOR ORDER

I. Overview

[1] This was a hearing pursuant to sections 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") for the Commission to consider whether it was in the public interest to approve a settlement agreement entered into between staff of the Commission and Andrew Oestreich ("Oestreich"), and to make an order approving the sanctions agreed to by Staff and Oestreich. Under the settlement agreement Oestreich was to cease trading for two years, be reprimanded, not be a director or officer of a reporting issuer for two years, and was required to pay $24,000 to the Commission (being one and one-half times his profit from selling shares while he had undisclosed material facts) and to pay costs of $5,000.

[2] The issue before us in the settlement hearing was whether the agreed sanctions were within acceptable parameters indicated in similar cases.

II. The Facts

[3] The facts are set out in the settlement agreement.

[4] Oestreich was a member of management although not a director of AiT. He had an honest but mistaken belief that he was not restricted from trading at the time he traded in shares of AiT. Oestreich did not receive any notice or warning from the company or Ash that at the relevant times he was prohibited from trading in share of AiT. He now understands and admits that he traded with knowledge of material facts that had not been generally disclosed.

[5] Oestreich was an insider of AiT. He understands that it is his responsibility to file insider trading reports and he acknowledges that these reports were not filed within the required deadline. However, he was following the practice at AiT when he submitted his reports to an assistant for filing. He was not aware that the reports were filed late until much later in time.

[6] At the present time, Oestreich is seeking permanent employment and is working on a contract basis as a consultant.

[7] Oestreich cooperated fully with staff during the course of the investigation of the matter.

III. Role of a Panel in a Settlement Agreement Hearing

[8] The role of a 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 (See *Re Sohan Singh Koonar et al.* (2002), 25 O.S.C.B. 2691 at 2692).

IV. The Settlement Agreement

[9] The settlement agreement provides for the following sanctions:

> (a) an order pursuant to clause 2 of subsection 127.1 of the Act that Oestreich shall cease trading in securities for a period of two years;
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> (b) an order pursuant to clause 6 of subsection 127.1 of the Act that Oestreich be reprimanded;
>
> (c) an order of the commission pursuant to clause 7 of subsection 127.1 of the Act that Oestreich resign all positions that he holds as a director or officer of a reporting issuer;
>
> (d) an order to clause 8 of subsection 127.1 of the Act that Oestreich be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of two years;
>
> (e) that Oestreich make a payment to the commission of $24,000 pursuant to clause 9 of subsection 127(1) of the Act and that such payment be allocated to or for the benefit of third parties in accordance with section 3.4(2) of the Act; and
> (f) an order pursuant to subsection 127.11(b) of the Act that Oestreich pay costs in the amount of $5,000.

[10] This case is not an egregious case of insider trading. In the most egregious cases of insider trading, the Commission has imposed or approved the following sanctions. A summary of the relevant cases is as follows:

> a) *Re Chang and Stone:* Chang was the Director of Investor Relations at ATI and was married to Stone. As an insider of ATI, Chang learned undisclosed material facts about the financial performance of ATI. Chang communicated this information to Stone. With possession of this undisclosed information, through a brokerage account in the Turks and Caicos opened in a corporate name, Chang and Stone purchased put options of ATI from which a profit of $950,384.80 was derived. The Commission found that Chang and Stone has breached section 76 of the *Act* and ordered (as jointly proposed by way of Settlement Agreement) that they: disgorge the profit ($950,384.80) and interest earned ($126,820) thereon: make a payment of $311,180.20; contribute $100,000 towards the costs of the Commission; and be reprimanded. In addition, Chang was ordered to cease trading for 20 years (subject to limited carve outs) and was prohibited from acting as an officer or director of a reporting issuer for 10 years. Lifetime bans on trading (subject to limited carve outs) and acting as an officer or director of a reporting issuer were ordered as against Stone.

Reasons of the Ontario Securities Commission *In the Matter of Jo-Anne Chang and David Stone* dated April 11, 2005

b) *Re Donnini*: Donnini was the Head Institutional Liability Trader for Yorkton Securities. Following a hearing conducted in respect of proposed orders under s. 127 of the *Act*, Donnini was found by the Commission to have traded on a "massive scale" with knowledge of potential financing for Kasten Chase Applied Research Ltd. That he had obtained from Yorkton's CEO. The fact of the potential financing had not been generally disclosed. Donnini did not make a personal profit on the trades. The sanctions imposed by the Commission were: a 15-year suspension of Donnini's registration; a 15-year cease trade order (subject to personal trading and RRSP carve outs); a 15-year officer and director ban regarding any issuer; and a payment in the amount of $186,052.30 on account of costs. The Divisional Court reduced the cease trade order from fifteen to four years and costs were referred back to the Commission for reassessment. The Court of Appeal allowed the Commission's appeal on the sanctions issue and restore Donnini's 15-year suspension.

Re Donnini, *supra*; rev'd (2003) 37 B.L.R. (3d) 46 (Ont. Sup. Ct); rev'd (2005), 250 D.L.R. (4th) 195 (Ont. C.A.)

[11] The more stringent sanctions imposed in *Chang and Stone* and *Donnini* can be juxtaposed to other cases where the Commission had approved or imposed sanctions that involve lower sanctions. The cases are summarized as follows:

a) *Re Harris*: Harris negotiated a reverse take over of a corporation for which he served as an officer and director. Harris sold shares in the corporation with knowledge of an undisclosed material fact; namely, the terms of the corporation reorganization. By so doing, Harris avoided a loss of $26,337.75. Harris did not file insider reports in relation to his trades nor did he correct a Management Information Circular which incorrectly identified him as a shareholder of the company. Harris was a registrant. By way of a jointly proposed Settlement Agreement, Harris admitted to breaching section 76 of the *Act* and to engaging in conduct contrary to the public interest. In approving the Settlement Agreement, the Commission ordered that: Harris cease trading for 24 months; the exemptions in the *Act* not apply to Harris for 24 months; Harris be prohibited from acting as an officer or director of an issuer for 24 months; Harris make a payment of $12,500 towards the Commission's costs; Harris make a payment of $39,500 (1.5 times the loss avoided); and Harris be reprimanded.

Reasons of the Ontario Securities Commission *In the Matter of Robert Walter Harris* dated November 4, 2004

b) *Re Carley*: Carley was the director of corporate development for Finline Technologies Ltd. ("Finline"). He traded in shares of Finline with knowledge of undisclosed material information regarding a pending acquisition by Finline. Carley's profit as a result of the trading was $59,600. By approval of the proposed Settlement Agreement, the Commission ordered as follows: that Carley be reprimanded; that Carley cease trading for 1.5 years; that Carley make a voluntary payment in the amount of $89,400 (1.5 times the profit made); and that Carley pay $20,000 in respect of costs. Carley had recently graduated

from university and had no prior experience working for a public company.

Re Johnathan Carley (2003), 26 O.S.C.B. 8197

c) *Re De La Torre and Rae* : The two respondents were married. De La Torre was the administrative assistant to two employees of the ATI Technologies Inc. and was privy to information not generally disclosed to the public and thus was in a special relationship with ATI. De La Torre communicated to Rae information about ATI's financial performance. As a result, Rae sold 1000 share of ATI in his RRSP account. Rae avoided a loss of $11,050. By approval of the Settlement Agreement, the Commission ordered as follows: that the respondents be reprimanded; that the respondents be cease traded for 6 months; and that the respondents also agree to make a settlement of $11,050 (the profit made).

d) *Re Parker*: Parker was the President and Chief Executive Officer of SmartSales Inc., a publicly listed company at the time. Parker traded in shares of SmartSales with knowledge of information not generally disclosed to the public that Roman Corporation Ltd. Was negotiating an acquisition transaction with one of its customers and that SmartSales would need to obtain alternate financing for the loans advanced to SmartSales by Roman. Parker was also in a special relationship with Roman. Parker, on behalf of his wife, traded 1000 shares of Roman and made a profit of $900. By approval of the Settlement Agreement, the Commission ordered as follows: that Parker cease trading for 6 months; that the exemptions do not apply to Parker for 6 months; that Parker resign any position as a director and officer and that he not act as a director and officer for a period of 6 months; and that Parker be reprimanded. Parker also agreed to make a payment of $1,800 (2 times the profit made) and agreed to make a payment of $5,000 in respect of costs.

In the Matter of Donald Parker, (OSC), Settlement Agreement and Order dated May 18, 2004.

[12] The following cases were Executive Director Settlements and are relevant to an analysis of the range of sanctions that has been imposed in cases involving insider trading. They are summarized as follows:

a) *Re Chapman*: Chapman had been a chartered accountant for 50 years. He traded in shares of Roman Corporation Limited, a reporting issuer, with knowledge of undisclosed information that an acquisition involving Boehmer Limited was pending. Chapman's accounting firm provided auditing and other services to Boehmer. Chapman's deemed profit as a result of trading was $7,511. Chapman agreed to the following terms of settlement: a settlement payment of $10,000 (1.2 times the profit made) and a payment of $5,000 in respect of costs.

In the Matter of Harold M. Chapman, (OSC), Executive Director Settlement Agreement dated March 27, 2004

b) *Re Newbury*: Newbury was a professional engineer. He traded shares of OntZinc Corporation with knowledge of undisclosed information that there was a proposal to acquire

Hudson Bay Mining and Smelting Co. Ltd. Newbury made a profit of $3,925 as a result of trading. Newbury agreed to the following terms of settlement: a payment of $7,850 (2 times the profit made), a payment of $5,000 in respect of costs and undertook not to trade form 12 months in any securities where he was a geological consultant without prior approval from the general counsel.

In the Matter of Michael Newbury, (OSC), Executive Director Settlement Agreement dated February 20, 2006

V. Conclusion

[13] We believe the *Harris* case and the *Carley* case are most similar to the fact situation based on the present case. We are satisfied that the proposed sanctions in the case before us are within acceptable parameters and reasonable and consistent with the approach adopted by the commission in similar related cases.

[14] For these reasons we were satisfied that the settlement agreement is in the public interest.

DATED at Toronto this 28th day of July, 2006

"Paul M. Moore"
Paul M. Moore

"Suresh Thakrar"
Suresh Thakrar