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

- and -

IN THE MATTER OF LIMELIGHT ENTERTAINMENT INC., CARLOS A. DA SILVA, DAVID C. CAMPBELL, JACOB MOORE AND JOSEPH DANIELS

HEARING HELD PURSUANT TO SECTION 127 OF THE ACT

SETTLEMENT HEARING RE: JACOB MOORE

HEARING:	Thursday, August 2, 2007	
PANEL:	Lawrence E. Ritchie	-Vice-Chair and Chair of the Panel
	Robert L. Shirriff	-Commissioner
APPEARANCES:	Derek Ferris	-for Staff of the Ontario Securities Commission
	Ian Smith	-for Jacob Moore

ORAL RULING AND REASONS

The following text has been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the decision.

Chair:

[1] This was a hearing under section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the "Act") for the Ontario Securities Commission (the "Commission") to consider whether it is in the public interest to approve a proposed Settlement Agreement between Staff of the Commission ("Staff") and the respondent Jacob Moore (Mr. Moore).

[2] We have read the written submissions, and heard the oral submissions and we have decided to approve the Settlement Agreement as being in the public interest.

[3] The proceedings concerned the role of Mr. Moore in the sale of common shares of Limelight Entertainment Inc. ("Limelight") during the period between May 2005 and April 2006 inclusive. Specifically, this proceeding involves allegations that Mr. Moore was involved in telephone solicitations and sales of Limelight shares contrary to the registration and prospectus requirements of the Act and the making of prohibited representations by Limelight salespersons contrary to section 38 of the Act.

[4] In the Settlement Agreement, Mr. Moore admits that:

- He was a Limelight salesperson;
- He has never been registered with the Commission in any capacity;
- He sold Limelight shares over the telephone to investors from July 2005 to April 2006 inclusive, and received approximately $14,525.00 in commissions or salary from the sale of these shares;
- The sale of Limelight shares constituted trades in securities of an issuer that had not been previously issued;
- By selling Limelight shares, he traded in securities, which were distributions, without a prospectus being filed and with no exemption from the prospectus requirements;
- He failed to provide Limelight investors with access to information that a prospectus filed under the Act would provide; and
- He made representations to the public regarding: (1) the future value of Limelight shares; and (ii) Limelight being listed on a stock exchange, with the intention of effecting trades in Limelight shares.

[5] We note from the agreed statement of facts that Mr. Moore is 28 years old currently, and was therefore 26 years old when he was employed by Limelight.

[6] By entering into the Settlement Agreement, Mr. Moore has recognized that his conduct was contrary to the public interest, and Mr. Moore has accepted sanctions which include a cease trade order, removal of exemptions and other restrictions to limit his participation in the capital markets.

[7] The Commission's mandate in upholding the purposes of the Act, as set of in section 1.1 of the Act, is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in the capital markets. In pursuing the purposes of the Act, the Commission is guided by certain fundamental principles, including to protect investors against fraud and unfair practices and processes and to promote and maintain the high standards in business conduct that ensure honest and responsible conduct by market participants.

[8] The Commission's mandate in this regard has been articulated in the following often quoted passage from *Re Mithras Management Ltd*:

> […] 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. (*Re Mithras Management Ltd*. (1990), 13 O.S.C.B. 1600 at pp. 1610-1611)

[9] As set out in the Settlement Agreement, Mr. Moore accepts the sanctions, which include:

- cease trading in securities for a period of four years (with an RRSP carve-out);
- exclusion from otherwise available exemptions under the Act for a period of four years;
- permanent prohibition from telephoning individuals for the purposes of trading in any securities or in any class of securities; and
- payment of $5000 in costs.

[10] Essentially, we understand that these sanctions will prohibit Mr. Moore from participating in the capital markets in Ontario for four years with limited exceptions.

[11] In determining whether the sanctions set out in the Settlement Agreement are appropriate we have also considered the sanctioning factors established in *Re M.C.J.C. Holding and Michael Cowpland* (2002), 25 O.S.C.B. 1133 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743, which include:

- the seriousness of the allegations;
- the respondent’s experience in the marketplace;
- the level of the respondent’s activity in the marketplace;
- whether of not there has been a recognition of the seriousness of the improprieties;
- whether or not the sanctions imposed provide sufficient deterrence; and
- any mitigating factors.

[12] Specifically in the matter before us today, we acknowledge that Mr. Moore has recognized the seriousness of his improprieties. As well, he is not currently working in the securities industry and has no future plans to be active in the securities industry.

[13] We also find that the proposed sanctions have taken into account the specific circumstances of this case (*Re M.C.J.C. Holdings and Michael Copland* (2002), 25 O.S.C.B. 1133 at pp. 1134-1135). We have considered prior decisions from this Commission involving trading without registration, such as *Re Prydz* (2000), 23 O.S.C.B. 910, *Re Lett* (2004), 27 O.S.C.B. 3215 and *Re Ayres, Kiss, Kack and Vaugh* (2002), 25 O.S.C.B. 1360, and we find that the sanctions in this Settlement Agreement fall within the appropriate range.

[14] In addition, we find that the agreed sanctions fulfill the requirement to deter future similar conduct, which is an important consideration as set out by the Supreme Court of Canada in *Re Cartaway Resources Corp*. (2004), 238 D.L.R. (4th) 193 (S.C.C.).

[15] We also find it acceptable that Mr. Moore has been granted an RRSP carve-out, and this is consistent with the practice in *Re Allen* (2006), 29 O.S.C.B. 3887.

[16] Further, Mr. Moore has undertaken to co-operate with Staff and testify if required at the Limelight Hearing, and we find this to be a mitigating factor. We understand from the submissions of Staff that at least one interview has been conducted and another has been scheduled. We are strongly of the view that his co-operation to date and agreement to co-operate with Staff is an important factor which weighs towards approving the Settlement Agreement as proposed.

[17] We recognize that as established in *Re Sohan Singh Koonar et al*. (2002), 25 O.S.C.B. 2691, the role of the Commission Panel in reviewing a settlement agreement is not to substitute its own sanctions for what is proposed in the Settlement Agreement. Rather, the Commission should ensure that the agreed sanctions in the Settlement Agreement are within acceptable parameters.

[18] This is what we as a Panel have done in approving this Settlement Agreement. Staff has provided us with a number of precedents, which we have looked at. Considering the respondent's position as stated in the Settlement Agreement, and the mitigating facts presented to us, we are of the view that the sanctions set out in the Settlement Agreement are within the acceptable parameters.

[19] As stated, in exercising our jurisdiction, we need to be satisfied that the Settlement Agreement is in the public interest. Therefore, we approve the Settlement Agreement as being in the public interest.

Approved by the Chair of the Panel on August 13, 2007.

"*Lawrence E. Ritchie*"

Lawrence E. Ritchie