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

REASONS AND DECISION

(Section 127 of the *Securities Act*)

Hearing:	October 1, 2007	
Written submissions:	October 23, 2007	
Decision:	February 12, 2008	
Panel:	James E. A. Turner Suresh Thakrar	Vice-Chair (Chair of the Panel) Commissioner
Counsel:	Derek Ferris Hanah Shaikh (Articling Student)	For the Ontario Securities Commission
	Gary Clewley	For Carlos A. Da Silva
	No one appeared for Limelight Entertainment Inc., David C. Campbell or Joseph Daniels	

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REASONS AND DECISION

A. OVERVIEW

1. Background

[1] On April 7, 2006, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations issued by Staff of the Commission ("Staff") on that day with respect to Limelight Entertainment Inc. ("Limelight"), Carlos A. Da Silva ("Da Silva"), David C. Campbell ("Campbell") and Jacob Moore ("Moore").

[2] On April 13, 2006, the Commission issued a temporary cease trade order (the "First Temporary Order") pursuant to subsections 127(1) and 127(5) of the Act against Limelight, Da Silva, Campbell and Moore. The terms of the First Temporary Order were that all trading in the securities of Limelight cease; that Limelight, Da Silva, Campbell and Moore cease trading in all securities; and that any exemptions contained in Ontario securities law do not apply to Limelight, Da Silva, Campbell and Moore.

[3] On April 25, 2006, an Amended Notice of Hearing and Amended Statement of Allegations were issued adding Joseph Daniels ("Daniels") as a respondent.

[4] On April 26, 2006, the First Temporary Order was extended and its terms were amended to include Daniels (the "Amended Temporary Order"). The terms of the Amended Temporary Order were that Daniels was ordered to cease trading in all securities and that any exemptions contained in Ontario securities law do not apply to him. The Amended Temporary Order also required Limelight to provide the Commission's notice of these proceedings to its shareholders.

[5] The Amended Temporary Order was extended on May 11, 2006, September 12, 2006 and October 30, 2006.

[6] Following a hearing on August 2, 2007, the Commission approved a settlement agreement between Moore and Staff in connection with these proceedings (the "Settlement Agreement").

[7] For purposes of these reasons, Limelight, Da Silva, Campbell and Daniels are referred to collectively as the "Respondents."

[8] On September 28, 2007, Staff and Da Silva entered into an Agreed Statement of Facts (the "Agreed Statement") in which Da Silva admitted breaches of the Act but did not agree on sanctions.

[9] The hearing on the merits took place on October 1, 2007. The Agreed Statement was entered into evidence, and we accepted the submissions of Staff and Da Silva that a sanctions hearing, if necessary, would be held at a later date. After making that submission, Da Silva and his counsel left the hearing room.

[10] No one appeared at the hearing for Limelight, Campbell or Daniels. We accept Staff's evidence that Limelight and Campbell received proper notice of the hearing. We also find that

Staff made reasonable attempts to locate and serve Daniels. We conclude, accordingly, that we are entitled to proceed to hear this matter in the absence of Limelight, Da Silva, Campbell and Daniels as permitted under section 7 of the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, as amended (the "SPPA"). Section 7 of the SPPA provides as follows:

> Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

2. The Respondents

(i) Limelight

[11] Limelight is an Ontario corporation that was incorporated on August 14, 2000. It was dissolved on or about November 29, 2004 and revived on or about September 27, 2005. It has never been registered in any capacity with the Commission. Upon incorporation, Limelight's directors were Da Silva, Campbell and Harry Hinde.

[12] Beginning in April, 2004, Limelight operated from an office located at 300 Richmond Street West, Toronto, Ontario. Limelight also, for a period of time, maintained an office at 4306 Lawrence Avenue East, in Scarborough, Ontario. In April or May of 2006, after the issuance of the Amended Temporary Order, the Richmond Street office was shut down and the Lawrence Avenue office served as Limelight's principal place of business. In addition, Limelight had a mailbox at 2916 Dundas Street West, Suite 514, Toronto, Ontario.

[13] Limelight has never been registered in any capacity under the Act and has never filed a preliminary or final prospectus with the Commission, nor has it ever received a receipt for any such prospectus from the Commission. The shares of Limelight have never been listed on any exchange, nor has the Commission given written permission to Limelight to make any representation to investors that Limelight shares are or would be listed on an exchange.

(ii) Da Silva

[14] Da Silva was the president of Limelight from April 5, 2004 until he resigned on or about April 17, 2006. He was a director of Limelight throughout the period in question. He was registered as a securities salesperson with Marchment and MacKay Limited from March 25, 1994 until November 21, 1997 and with C. J. Elbourne Securities from November 28, 1997 to June 30, 2000 . Since that time Da Silva has not been registered in any capacity under the Act.

[15] Of the 18,482,035 outstanding shares of Limelight as of March 1, 2006, Da Silva is the owner of 10,750,000 shares or approximately 58% of such shares.

(iii) Campbell

[16] Campbell was the vice-president of Limelight from April 5, 2004 until on or about April 17, 2006, when he succeeded Da Silva as president. He was a director of Limelight throughout the period in question. He has never been registered in any capacity under the Act.

[17] As of March 1, 2006, Campbell owned 2,000,000 shares of Limelight representing approximately 11% of such shares. Campbell is the second largest shareholder of Limelight.

(iv) Daniels

[18] It appears from the evidence that Daniels was a salesperson with Limelight from approximately April, 2006 to May, 2006. He has never been registered in any capacity under the Act.

3. Issues

[19] Staff's allegations raise the following issues in this matter:

1. Did Limelight, Da Silva, Campbell and Daniels breach the registration and prospectus requirements of the Act by trading in Limelight shares contrary to subsections 25(1) and 53(1) of the Act in circumstances where the "accredited investor" exemption was not available under OSC Rule 45-501, *Prospectus and Registration Exemptions* (now NI 45-106) ("Rule 45-501")?
2. Did Limelight, Da Silva and Campbell give undertakings regarding the future value of Limelight shares, with the intention of effecting sales of Limelight shares, contrary to subsection 38(2) of the Act?
3. Did Limelight, Da Silva, Campbell and Daniels make representations regarding the future listing of Limelight shares, with the intention of effecting sales of Limelight shares, contrary to subsection 38(3) of the Act?
4. Did Da Silva mislead Staff, contrary to clause 122(1)(a) of the Act, when he advised Staff that (i) Limelight shareholders were accredited investors, (ii) Limelight salespersons always enquired to confirm that sales of Limelight shares were made only to accredited investors, (iii) no scripts were used by Limelight salespersons, (iv) Limelight salespersons also acted as project managers of Limelight's business, and (v) he did not know whether Limelight shares were sold to Ontario investors in 2005?
5. Did Limelight and Da Silva file misleading or untrue reports of exempt distributions with the Commission contrary to clause 122(1)(b) of the Act?
6. Did Limelight, Da Silva, Campbell and Daniels breach the First Temporary Order or the Amended Temporary Order?
7. Was the conduct of Limelight, Da Silva, Campbell and Daniels contrary to the public interest?

B. EVIDENCE

1. Introduction

[20] None of the Respondents appeared before us to dispute the evidence submitted to us by Staff, except that Da Silva appeared at the outset of the hearing to state that he disputes Staff's allegation that he knew "scripts" were being used by Limelight salespersons and that he would make submissions on sanctions at any sanctions hearing.

[21] The evidence before us consists of:

(i) the Agreed Statement;

(ii) the testimony of:

(a) one Limelight investor;

(b) two Limelight salespersons, Moore and Ove Simonsen ("Simonsen");

(c) the Commission's principal investigator, Larry Masci ("Masci"); and

(iii) the affidavit evidence of three additional Limelight investors.

[22] Staff provided us with eight binders of documentary evidence, which were referred to during the hearing by the witnesses and Staff. Included in the binders is documentation relating to an additional five Limelight investors who neither testified nor swore affidavits.

[23] Overall, we found the evidence submitted to us to be consistent, clear and cogent, except with respect to certain allegations against Daniels.

2. The Agreed Statement of Facts between Staff and Da Silva

[24] The Agreed Statement includes numerous admissions with respect to the conduct of Da Silva and the other Respondents, and describes Limelight's operations in detail. The following is a summary of the agreed facts.

(i) Trading and Distribution of Limelight Shares

[25] The Agreed Statement indicates that from April, 2004 to May, 2006, Limelight sold approximately 1.6 million Limelight shares to investors at prices that ranged from $0.50 to $2.00 per share. As a result of these sales, Limelight raised approximately $2.75 million from investors located in all ten provinces of Canada and from investors outside of Canada.

[26] Limelight's shareholder list and investor cheques admitted in evidence indicate that approximately 71 Ontario residents invested in Limelight during the period from April, 2004 to May, 2006 inclusive.

[27] Limelight employed about six "qualifiers" (telemarketers) at any given time. The qualifiers were responsible for cold-calling prospective investors to solicit interest in buying

Limelight shares. If any interest was expressed, the investor would be referred to a "consultant" (salesperson), who was responsible for completing the sale. Limelight employed about five to eight salespersons.

[28] Da Silva and Campbell acted as securities salespersons contrary to the registration requirements found in section 25 of the Act.

[29] The trades in Limelight shares were trades in securities not previously issued and were therefore distributions. No prospectus was filed and therefore the sales of Limelight shares were illegal distributions contrary to section 53 of the Act.

(ii) Prohibited Representations

[30] The Agreed Statement indicates that Campbell advised Limelight's salespersons that Limelight was raising money for the purpose of going public. Limelight salespersons in turn advised prospective investors that Limelight would be going public and that its shares would be listed on a stock exchange in order to effect sales of Limelight shares.

[31] Limelight's salespersons advised prospective investors that they could make two to four times their initial investment within six months. Some investors were told that the Limelight share value was expected to rise to $3 to $10 per share once Limelight went public. Other investors were advised by Limelight's salespersons that they were unable to sell their Limelight shares for six to twelve months.

[32] Limelight and its salespersons made representations regarding the future value of Limelight shares and Limelight being listed on a stock exchange with the intention of effecting trades in Limelight shares contrary to subsections 38(2) and (3) of the Act.

(iii) Misleading Statements by Da Silva

[33] The Agreed Statement indicates that by letter received by Staff on May 12, 2005, Da Silva advised Staff that each potential Limelight investor was told that the investment opportunity in Limelight was available only to accredited investors. This same information was provided to Staff during Da Silva's voluntary interview on December 13, 2005.

[34] During his voluntary interview on December 13, 2005, Da Silva also advised Staff that (i) Limelight shareholders were accredited investors; (ii) no scripts were used by Limelight; (iii) Limelight salespersons always enquired to confirm that all sales of Limelight shares were made only to accredited investors; and (iv) Limelight's salespersons also acted as project managers. These statements were false and misleading.

(iv) Untrue and Misleading Forms Filed with the Commission

[35] The Agreed Statement indicates that on or about July 23, 2004, Limelight filed a Form 45-103F4 – *Report of Exempt Distribution* ("Form F4") with the Commission relating to the distribution of common shares to nine investors in Alberta, Saskatchewan, British Columbia and Ontario.

[36] The Form F4 did not list or disclose any commissions or finders' fees paid in connection with the distributions of Limelight shares or the exemption relied on. The Form F4 stated that the Limelight shares were distributed on July 14, 15 and 16, 2004 and was signed by Da Silva as president of Limelight.

[37] On or about October 13, 2004, Limelight filed a second Form F4 with the Commission relating to the distribution of common shares of Limelight to 69 investors in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, the United States, Barbados and the United Kingdom.

[38] The second Form F4 also did not disclose any commissions or finders' fees paid in connection with the distribution of Limelight shares or the exemption relied on. The second Form F4 was also signed by Da Silva as president of Limelight and reported on trades from July 27, 2004 to September 17, 2004 inclusive.

[39] On or about October 13, 2004, Limelight filed a Form 45-501F1 – *Report under Section 72(3) of the Act or Section 7.5(1) of Rule 45-501* ("Form 45-501F1") with the Commission relating to the distribution of Limelight shares to 29 investors in Alberta and Ontario.

[40] The Form 45-501F1 did not disclose any commissions or finders' fees paid and stated that the accredited investor exemption in section 2.3 of Rule 45-501 was being relied upon. The Form 45-501F1 was signed by George Schwartz on behalf of Da Silva, president of Limelight. The Form 45-501F1 incorrectly listed the dates of the 29 trades as October 4, 2004 whereas the trades actually occurred on or between June 10, 2004 and August 29, 2004.

[41] In selling Limelight shares to Ontario residents and residents of other jurisdictions, Limelight purported to rely upon the exemption for selling securities to accredited investors in OSC Rule 45-501 in circumstances where the exemption is not available.

[42] The vast majority of Limelight investors are not accredited investors. Furthermore, Limelight's salespersons made no efforts to enquire into the financial situation of prospective investors in order to determine whether such persons qualified as accredited investors.

[43] Limelight and Da Silva filed untrue and misleading forms with the Commission and misrepresented that the sale of Limelight shares reported in the two Form F4s and the one Form 45-501F1 were exempt trades and that no commissions or finders' fees were paid in respect of those distributions.

(v) Breach of the Commission's Orders

[44] The Agreed Statement indicates that on April 13, 2006, the Commission issued the Temporary Order that: (i) all trading in the securities of Limelight cease; (ii) Limelight, Da Silva, Campbell and Moore cease trading in all securities; and (iii) any exemptions contained in Ontario securities law do not apply to Limelight, Da Silva, Campbell and Moore.

[45] The motion seeking a Temporary Order was made on notice to Limelight, Campbell and Da Silva. Counsel advised the Commission that the respondents did not oppose the Temporary Order.

[46] After the issuance of the Temporary Order, Limelight, Campbell, and Limelight's salespersons continued to solicit investors and receive investor cheques up to about June 1, 2006. Campbell and Da Silva each cashed investor cheques after the Temporary Order was issued. These activities were in breach of the Temporary Order.

[47] After the issuance of the Temporary Order, Limelight used: (i) the Limelight office at 300 Richmond Street West, Toronto, (ii) a mailbox address at suite 514-2916 Dundas Street West, Toronto, and (iii) a house at 4306 Lawrence Avenue East, Scarborough, for its sales activities.

(vi) Conduct Contrary to the Public Interest

[48] The Agreed Statement indicates that as officers and directors of Limelight, Da Silva and Campbell authorized, permitted or acquiesced in breaches of sections 25, 38 and 53 of the Act by Limelight and its salespersons contrary to subsection 122(3) and/or subsection 129(2) of the Act and in doing so have engaged in conduct contrary to the public interest.

(vii) Conclusion as to the Agreed Statement

[49] We accept Da Silva's admissions in the Agreed Statement with respect to his own conduct and his role at Limelight. Da Silva's admissions with respect to Limelight and Campbell and the operation of the Limelight trading scheme were corroborated by the other evidence we received, and accordingly, for the reasons given below, we accept this evidence.

3. Testimony of Ove Simonsen

[50] Simonsen was a salesperson at Limelight from March, 2005 to April, 2006, apart from several weeks when he was away because of illness and a further period when he worked part-time. He is currently 71 years old. He is trained as a development planner and urban planner and has an undergraduate degree in architecture.

[51] Simonsen testified that an acquaintance referred him to Campbell, whom he called to inquire about a job in February, 2005.

[52] Simonsen testified that he had "a fairly lengthy meeting" with Campbell at Limelight's Richmond Street office. Campbell explained they were looking for people to buy Limelight shares "and they would be able to sell these shares once Limelight had the project listed on the stock market." Simonsen's job would be to solicit investors to "come in early on to take advantage of the shares that were being offered." Simonsen accepted the job offer. His job title was sales executive.

[53] On his first day at the office, Simonsen met again with Campbell. Campbell explained the procedure and handed him "a stack of information that should be used as a guide for when I contacted the customers I'd be phoning." The information included "messages and the kind of text I should use." Campbell suggested that he sit down with one of his co-workers to get a sense how the job should be done, "how I should make my calls, what I should say, how I should say it, the tone to use, also adding any other information that might be important for the client. . . ."

[54] Simonsen described the sales process and the Limelight offices. On the first floor, a group of telemarketers made initial calls to potential investors, using a very brief script, to determine interest. Simonsen testified there were five to six staff in this group, and each of them made hundreds of calls a day all across Canada. Also on the first floor were the offices of Da Silva, Campbell, a senior sales executive, an accountant and a secretary. Upstairs, five to six people worked as salespersons, including Simonsen and Moore. The initial contact people would prepare "lead cards" on potential investors for follow-up by the salespersons.

[55] Staff introduced, through Simonsen, several of the documents Simonsen testified he received on his first day, which would be used at different points in the process from the initial call to the completed sale.

[56] The first document was identified by Simonsen as a cold-call script. Simonsen testified that this script was part of the information package he received when he started. He explained that in a cold call he would introduce the project and answer any questions and encourage the person to purchase shares, indicating that "it would be a private listing initially, and then it would be available or be listed on the stock market." The time frame given for obtaining a listing "was something within a year." Simonsen testified that he used the document "almost in its totality" in making his calls. Further, Simonsen testified that most of the handwritten notes on the document were his own notes from his meetings with Campbell. He testified that the salespersons "often" met with Campbell "as frequently as once or even twice a week;" the briefings "were often to chastise if we weren't doing well on sales." Simonsen believed that other salespersons received the same set of documents.

[57] Another document introduced through Simonsen included a list of possible objections from potential investors and possible responses. Simonsen testified that another salesperson had prepared a document that included a series of such prompts, for example: if the potential investor said they had no interest, the prompted response was "That's fine but before I let you go what would you say if I were to tell you that you were looking at making anywhere from 3 or 4 times (your money back) the money invested within the next six months . . . ." Simonsen testified that he rarely used this document and did not refer to a return of three or four times the investment, but stated only that the company should perform very well and make some gains in the future.

[58] According to Simonsen, if a potential investor asked if the shares could be resold, they would be advised that the shares could not be sold until they were listed on the stock market. Simonsen testified that at the beginning of his time with Limelight, he would tell potential investors that the principals of Limelight were aiming to list the company within the year, and this was reduced to six to seven months as time went on. If the investor said they did not know anything about Limelight, an "executive summary" of Limelight's projects would be sent out to them.

[59] Simonsen also identified documents setting out a "call-back pitch," and a "final order pitch." In the final call, the salesperson would obtain contact information and confirm the number of shares being purchased. Limelight would then send a courier to pick up the cheque from the investor.

[60] Simonsen testified that there were no "classes of persons" to whom the salespersons were told not to sell shares. Limelight's salespersons simply called the telephone numbers on the cards

provided by Limelight's "qualifiers" or "pre-qualifiers," who made the initial calls to generate leads. Calls were also made to people outside Canada and in other provinces.

[61] Simonsen testified that although he had heard the term "accredited investor", he did not know what it meant. While he said that salespersons did question investors about their financial situation, it was not to determine whether or not the potential investor was an "accredited investor." It was to assist the salespersons in making a sale at an amount consistent with a potential investor's financial assets. Simonsen also testified that the salespersons at Limelight had no project management responsibilities and were solely involved in selling shares. He testified that he could make anywhere from 50 to 100 calls per day, depending on how many were follow-up calls and how many involved lengthy conversations.

[62] Simonsen testified that he and the other salespersons were not paid a salary, but were paid commissions on sales they generated. Simonsen said the commission was "between 15 and 20 percent" of the amount of the sale. The qualifiers were paid a salary plus a small commission on sales.

[63] Simonsen testified that Campbell was in the office every day and he was "the principal, as far as we were concerned, on the day-to-day management" of the company. Simonsen reported to Campbell. Campbell was responsible for briefing and training the salespersons as well as tracking their sales. From time-to-time, Campbell would demonstrate the use of the scripts by personally calling a potential investor. In addition, on one or two occasions where a salesperson had difficulty closing a sale, Campbell contacted the potential investor himself. Campbell was also responsible for approving the order forms, ensuring payment was received and doing the accounting.

[64] According to Simonsen, Da Silva was the "more senior person," but Simonsen understood Da Silva and Campbell to be "sort of equal partners." Simonsen understood that Da Silva was the principal on the promotional side, developing projects for Limelight., while Campbell was the "day-to-day guy." Simonsen testified that Da Silva was in the office "from time to time" and "he spoke to us from time to time, but he never briefed us." Simonsen testified Da Silva could be out of the office for months at a time.

4. Testimony of Jacob Moore

[65] In the Settlement Agreement approved by the Commission on August 2, 2007, Moore admitted, amongst other things, that: (i) he was a Limelight salesperson; (ii) he has never been registered with the Commission in any capacity; (iii) 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 those shares; (iv) the sale of Limelight shares constituted trades in securities of an issuer that had not been previously issued; (v) by selling Limelight shares, he distributed such shares without a prospectus being filed and with no exemption from the prospectus requirements being available; (vi) he made representations to potential investors regarding the future value of Limelight shares and Limelight shares being listed on a stock exchange, with the intention of effecting trades in Limelight shares; and (vii) his conduct in selling Limelight shares was contrary to Ontario securities law and the public interest. Moore agreed to sanctions including a four year ban from trading in any securities (with an RRSP carve-out), a four-year ban from relying on any prospectus or registration exemptions, a permanent

prohibition on telephoning from inside Ontario to any residence within or outside Ontario for the purpose of trading in securities, and payment to the Commission of $5,000 in investigation costs. He also agreed to cooperate with the Commission in its investigation and any enforcement proceedings. He was one of Staff's witnesses at this hearing.

[66] Moore testified that he was a salesperson at Limelight for approximately eight months starting in July 2005. He worked previously in telephone sales, and became aware of the Limelight job through a posting on workopolis.com. After responding to that posting, he was interviewed by Campbell at the beginning of July 2005. He was hired as a salesperson, with a title of "venture capitalist," and started the following Monday.

[67] Moore testified that he and all the salespersons reported to Campbell. As a salesperson, he had no project management responsibilities, and his information about Limelight's projects came only from the "executive summary" that was provided by Campbell. He would follow up on the leads generated by Limelight's "qualifiers," who made initial contact with potential investors, as well as calling numbers from "cold-call sheets" provided by Campbell. Other Limelight salespersons worked as "loaders," contacting existing shareholders and offering further Limelight shares at a lower price. Moore was told that he would be paid a commission of 20% of the sale, but he would receive 25% if he generated the "lead" himself through a cold call. In addition, he would be paid 10% if one of his sales "loaded" (invested in more shares). For the first month, he would be paid $400 a week against commissions.

[68] Moore testified there were between five and eight salespersons at Limelight while he worked there. He testified that salespersons were supposed to make between 60 and 80 calls per day, but he was in the 40-50 range most of the time. He made calls to potential investors in other provinces and, though he did not make international calls, he recalled seeing documentation with U.K. addresses. Once the salesperson closed the sale, the information would be given to one of the secretaries, who would send out a contract for the investor's signature. Investors paid by cheque, sent by courier, and Moore would receive a photocopy so he could document his sales. He testified he earned around $14,000 in commissions over the time he worked at Limelight.

[69] On his first day at Limelight, Moore was given scripts and rebuttal sheets by Campbell. Shown several of the documents identified by Simonsen, Moore recognized them as "scripts," and testified they were provided by Campbell and used by all the salespersons. Moore described a "first-call script," a "closing script" and "a sheet of rebuttals." He testified that most of the salespersons used the scripts and kept them on their desks.

[70] With respect to representations about future value of Limelight shares, Moore testified he would say "You could be looking at something like two to three times your money over the next year." He heard other salespersons making similar statements. He testified that most used "the scripted line" ("three or four times the money") but every so often he would hear somebody say "ten times or something like that."

[71] Moore testified that Campbell told him Limelight was collecting venture capital to take the company public, and he passed this on to potential investors. Moore did not think Campbell gave a specific time frame for listing the shares, though he suggested it was soon. Moore would tell potential investors "it's only a matter of time or something like that."

[72] Moore was not familiar with the term "accredited investor." He testified that he made financial inquiries only to determine what an "appropriate" investment would be for a particular investor. He testified that while he worked at Limelight there was no mention of obtaining registration under the Act for Limelight salespersons.

[73] According to Moore, Campbell was in the office daily. Campbell would, several times each day as part of his managerial role, attempt to motivate the salespersons to sell more shares. Moore testified, however, that he never personally heard Campbell telephone customers to solicit purchases.

[74] Moore believed Da Silva to be the president and chief executive officer of Limelight and he testified that Da Silva was in the office two to three times per week. Moore testified that he was once in Da Silva's office while Da Silva called one of Moore's leads in an attempt to close a sale. Moore testified that Da Silva used "pressure tactics," such as stating that shares were running out and that Limelight was going to go public soon. This was the only time, in Moore's experience, that Da Silva personally solicited investors. Moore said that Da Silva almost never came upstairs to the sales floor.

[75] Moore testified that his last day of work was the last business day of March 2006. He was given the option of working out of the Scarborough office they were setting up, but he turned it down. He went to the Scarborough office towards the end of April and met Da Silva, who gave him a cheque for $200 or $400. According to Moore, that was the last time he contacted Da Silva or Campbell.

5. Testimony of Investor One

[76] Investor One is from a small Ontario town. He is self-employed in a small business, earns approximately $25,000 per year, and has an RRSP worth about $8,000. He described himself as having a low level of investment and financial expertise. We are not satisfied Investor One is an accredited investor.

[77] In the spring of 2003, Campbell called Investor One soliciting investments in a company called Euston Capital ("Euston"). Investor One purchased 3,000 shares at $3 per share, for a total of $9,000, in four transactions.

[78] In the spring of 2004, Campbell or Hank Ulfan ("Ulfan") called Investor One to solicit a purchase of Limelight shares. (Investor One testified that he may also have dealt with Ulfan with respect to purchasing shares of Euston.) Campbell or Ulfan told Investor One that Limelight was an entertainment company that "had the sole rights to produce a greatest-hits CD by Shania Twain." Limelight's "executive summary" of its business was sent to him, along with an offering memorandum. Investor One purchased 2,000 Limelight shares at a price of $1 per share. He testified that he signed the purchase agreement on April 20, 2004, and on April 26, 2004, it was couriered to Limelight, along with his cheque, by way of Euston's Toronto office. He received another call from Ulfan, as well as a follow-up letter, but he did not purchase any more shares of Limelight. Investor One testified that another solicitation letter came in an envelope with Campbell's business card.

[79] During the sales process, Ulfan or Campbell told Investor One there was a good chance he could double his money once Limelight went public, and that if he decided to keep his shares in Limelight, the shares would receive a "continual" dividend. Investor One testified that neither Campbell nor Ulfan made inquiries into his financial situation and that he was unaware of the term "accredited investor." Campbell and Ulfan made no mention of the risks associated with purchasing Limelight shares.

[80] After purchasing shares in Limelight, Investor One was referred to Da Silva. Investor One understood that Da Silva was the president of Limelight and Campbell the Secretary. Da Silva offered to answer any questions and gave him his direct line. Investor One called Da Silva on a regular basis. Da Silva was positive about the direction Limelight was taking and Investor One was made to understand he could double his money.

[81] In the spring of 2005, Investor One called Da Silva about getting his money back. Da Silva told him he could not get his money back, and encouraged him to attempt to sell his shares in Euston, which had by this time been exchanged for shares in another company called "AccessMed." Investor One tried to sell the AccessMed shares through TD Waterhouse, but he was told the shares were not trading and TD Waterhouse could find no information on them. To date, Investor One has not recovered any of his investment in Limelight shares.

6. Affidavit of Investor Two

[82] Investor Two is a 41 year old lawyer who practices real estate and family law in Toronto, Ontario. He swore that he has been investing periodically for about twenty-two years through trading accounts at TD Waterhouse and Nesbitt Burns. Another lawyer referred him to Bill Tevrachte ("Tevrachte"), who advised that he knew someone who was looking for investors.

[83] Investor Two met Tevrachte and Da Silva for lunch in April 2004. Da Silva introduced himself as the president or vice-president of Limelight. He said he was seeking investors to finance a new Shania Twain album to be released by Christmas of that year, if things went well. He also told Investor Two that Limelight would be trading on a stock exchange within six months to a year, and that Limelight shares were priced at $1.00 per share. Investor Two was told that once the proposed album was released, the Limelight shares would produce income through dividends.

[84] Investor Two was aware that there were exemptions in the Act that allowed for the sale of shares without a prospectus, and he believed he qualified for the exemption. Investor Two swore that Da Silva made no attempt to obtain information regarding his financial assets or liabilities or his salary. Investor Two's financial assets do not exceed $1 million, his net income does not exceed $200,000 per year, and his combined family income does not exceed $300,000 per year. Accordingly, we are not satisfied that Investor Two is an accredited investor.

[85] On April 26, 2004, a Limelight share purchase agreement was faxed to Investor Two. He signed the agreement on April 28, 2004, purchasing 10,000 shares of Limelight at a price of $1.00 per share. On August 13, 2004, he received a share certificate as proof of his ownership of the 10,000 shares.

[86] In July, 2004, Investor Two purchased an additional 2000 shares of Limelight for $2,000. He has never received a share certificate for those Limelight shares.

7. Affidavit of Investor Three

[87] Investor Three is 50 years old, self-employed and resides in a small Ontario town. Investor Three has a net worth of $400,000, including RRSPs and cash. He owns land valued at approximately $400,000, and he owes approximately $100,000. He swore that he has a moderate level of market knowledge, trading mostly through TD Canada Trust. Based on the evidence before us, we are not satisfied that Investor Three is an accredited investor.

[88] In July, 2005, Investor Three received a telephone call from Moore, who described himself as a Limelight salesperson. Moore told Investor Three that Limelight had several successful projects and would be backing Shania Twain's next album, which, if successful, would likely double his investment. Moore also stated that Limelight shares were expected to begin trading on the "Toronto OTC" market by December 2005. When Investor Three asked whether any part of his investment would go towards Moore's sales commission, Moore told him he was paid in Limelight shares and not by commission. Moore informed Investor Three that few Limelight shares remained unsold and he should purchase quickly.

[89] Investor Three asked for a prospectus. In response, Moore sent out an "executive summary" describing Limelight's business. In response to a further enquiry, Moore sent out a Better Business Bureau report. Investor Three swore that in the months before he bought the Limelight shares, Moore called him about every ten days, repeatedly stating that the "deadline" for the shares to be publicly traded was getting close, and that the shares would increase in value once Limelight went public.

[90] At no time did Moore ask Investor Three about his financial situation, or whether he was an accredited investor.

[91] On November 14, 2005, Investor Three sent Limelight a signed share purchase agreement, and on or about December 15, 2005, he sent a cheque for $2,000 as payment for 1,000 Limelight shares. The evidence of Investor Three was corroborated by Moore, who testified that he sold Investor Three Limelight shares for $2,000.

[92] On or about March 10, 2006, Investor Three called Moore to ask why he had not yet received a share certificate. Moore told him he would send it, advised that Limelight had been in contact with the Commission, and that he was "100% sure that Limelight shares would be going to market." On or about March 25, 2006, Investor Three received a share certificate along with a share purchase confirmation form, but he did not sign or return it.

8. Affidavit of Investor Four

[93] Investor Four is 59 years old and has been on disability insurance since 1996. His net worth is approximately $40,000, which includes RRSPs and cash. His annual income from disability insurance, Canada Pension and an annuity, is $23,000. Investor Four has a high school education and has completed various computer courses. We are not satisfied that Investor Four is an accredited investor.

[94] In June, 2004, Investor Four received a telephone call from Allen Fox ("Fox") soliciting an investment in Limelight. Fox described himself as a broker with Limelight who dealt with accounting matters. Fox told Investor Four that Limelight was raising money to "build up the shares" of Limelight so that they could purchase the early recordings and videos of Shania Twain.

[95] Fox asked Investor Four about his age, income, occupation and financial means. Investor Four informed Fox that he was disabled and receiving disability insurance. Fox asked Investor Four to invest $100,000, but Investor Four refused.

[96] During June and July of 2004, Campbell contacted Investor Four and went over everything Fox had told him. Campbell represented that Limelight was attempting to obtain a listing on the Toronto Stock Exchange ("TSX"). Campbell sent Investor Four some press releases to read, but Investor Four did not invest.

[97] At the end of July, 2004, Investor Four was again contacted by Fox, who convinced Investor Four to purchase 5,000 Limelight shares for $10,000. Investor Four sent a cheque by courier and also signed a "confirmation letter" that was sent back to Limelight.

[98] When asked by Investor Four about the risk in purchasing Limelight shares, Campbell and Fox assured him that the risk was low, and that when the Limelight shares were traded on the TSX the price would rise to $5.00 per share. They advised Investor Four to sell half of his shares when the price reached $5.00, and assured him that they would call when it was time to sell. Fox and Campbell advised Investor Four that he was required to hold his shares for one year before they could be sold.

[99] Following his receipt of a letter from Staff in September, 2005, Investor Four contacted Da Silva to inquire about the status of Limelight. Da Silva advised Investor Four that Limelight had been "through the courts" to obtain the Shania Twain recordings and that Limelight had purchased those recordings.

[100] During this telephone call, Investor Four asked Da Silva to repurchase his shares. Da Silva promised to send some information, but never did. Da Silva also told him that within three months Limelight would be offering to exchange Limelight shares for new shares of "U.S. Limelight" and that Investor Four would receive 25,000 of the new shares.

[101] Da Silva advised Investor Four that U.S. Limelight would be based in Houston, Texas, to take advantage of the bigger market for fundraising. He further advised Investor Four that he would be transferring $5 to $7 million to the U.S. company. We received no evidence of any U.S. Limelight company.

9. Evidence of Larry Masci

[102] Masci has been an investigator with the enforcement branch of the Commission for 19 years. In addition to his oral testimony, Masci swore two affidavits that were tendered by Staff. In his oral testimony, Masci described his investigation of Limelight, beginning in July 2005. He also authenticated and explained the documents tendered by Staff, including the affidavits of three Ontario investors (Investors Two, Three and Four).

[103] Masci's first affidavit, dated April 25, 2006, related to a New Brunswick investor ("Investor Five") who was a Limelight shareholder. Masci was contacted by a New Brunswick Securities Commission investigator, Ed LeBlanc ("LeBlanc"), regarding Investor Five. LeBlanc told Masci that Daniels contacted Investor Five on April 14, 2006. According to LeBlanc, Daniels solicited Investor Five to purchase Limelight shares at $1 per share and advised him that Limelight would be listed on an exchange within 10 to 12 days. According to Masci's affidavit, LeBlanc provided him with an affidavit describing his investigation, but Staff did not introduce LeBlanc's affidavit into evidence in this proceeding.

[104] In response to LeBlanc's information, Masci contacted Investor Five by telephone. During this conversation, Investor Five told Masci he is 65 years of age and has an income of $40,000 to $50,000 per year and total assets of approximately $200,000, including his home and business. Accordingly, we are not satisfied that Investor Five is an accredited investor.

[105] According to Masci's affidavit, Investor Five had originally purchased $5,000 of Limelight shares after he was told that Limelight had a contract with the CBC and was recording Shania Twain. Investor Five was contacted by Limelight on April 11 or 12, 2006. Following that contact, Investor Five telephoned Limelight and was solicited to purchase Limelight shares at $1 per share and was told that Limelight would soon be "going to market." He was unsure of exact dates, but he was certain that his discussion with the Limelight salesperson occurred after Limelight was "shut down by the OSC." Investor Five declined to purchase any additional shares.

[106] Masci's second affidavit, dated May 10, 2006, concerns two matters. The first is Staff's attempts to locate and serve Daniels, and the second is Masci's discussion with another Limelight investor ("Investor Six").

[107] Masci swore in his second affidavit that, since April 26, 2006, when the Commission issued its cease trade order against Daniels and added him as a Respondent, Masci had been attempting, unsuccessfully, to locate him.

[108] Staff learned of Daniels' telephone number from investors. The number is registered to Hompesch Media Group, 4306 Lawrence Ave East, Scarborough, but there is no evidence that the company exists. However, the business name is registered to Da Silva and Silvio Astarita. The number connects the caller to Da Silva's voicemail.

[109] Masci testified that on May 12, 2006 he attended at the Limelight office in Scarborough in an attempt to serve Daniels with a New Brunswick Securities Commission order, the Amended Statement of Allegations, the Amended Notice of Hearing, and other documents. Daniels was not present. Da Silva, who was present, told Masci that he was not aware of Daniels' whereabouts, that Daniels had left with Campbell, and that he was "an American who comes up here, does his thing, and goes back out." Masci served the documents upon Da Silva. Staff has not been able to make any direct contact with Daniels.

[110] Masci's second affidavit also concerned Investor Six. On May 8, 2006, Masci again spoke to LeBlanc, who advised him that Daniels had recently contacted Investor Six. As a result of this contact, according to LeBlanc, Investor Six was sent a share purchase agreement, a

solicitation letter, an executive summary of Limelight's business and a Limelight share certificate.

[111] Masci spoke to Investor Six on May 8, 2006. Investor Six is a New Brunswick resident and a Limelight shareholder. According to Masci's affidavit, Investor Six was contacted by Da Silva some time in 2005 to solicit sales of Limelight shares to him. At that time, Investor Six purchased Limelight shares for $5,000.

[112] On May 10, 2006, Investor Six advised Masci that within the preceding week he had been contacted by Daniels, who told him that Limelight shares would be trading on NASDAQ within 30 days, and offered Limelight shares at a price of $1 per share. Investor Six did not purchase any additional shares.

[113] Masci was advised by Investor Six that he does not earn in excess of $200,000 per year and has financial assets of less that $1 million. Accordingly, we are not satisfied that Investor Six is an accredited investor.

10. Da Silva and Campbell as Directing Minds

[114] In the Agreed Statement, Da Silva admitted that he was a directing mind of Limelight and stated that Campbell was also a directing mind of Limelight. Da Silva was the president of Limelight until on or about April 17, 2006, but he remained a director thereafter. After Da Silva's resignation as president, Campbell, who was formerly the vice-president of Limelight, became its president and sole signing officer. Da Silva owned more than 50% of the shares of Limelight and Campbell owned approximately 11%.

[115] That Da Silva and Campbell were the directing minds of Limelight was also corroborated by Simonsen and Moore. They testified that Da Silva was the principal of the operation, and was understood to be involved in "project development." Campbell was responsible for day-to-day operations, supervised the Limelight salespersons and orchestrated Limelight's sales practices.

[116] We find, therefore, that Da Silva and Campbell were the directing minds of Limelight. Both men were aware of and authorized, permitted or acquiesced in Limelight's breaches of the Act. Accordingly, Da Silva and Campbell must take responsibility for the conduct of Limelight. As discussed below, both men also directly contravened the Act.

11. Limelight's Business Operations

[117] According to documentary evidence introduced through Masci, Limelight purported to be engaged in a number of business projects. The evidence we heard suggests that the Shania Twain project was the most often referred to in soliciting investments during the period in question. The evidence as to the exact nature of that project is conflicting. It has been described as involving a greatest hits album, a deal for the early recordings and videos of Shania Twain, a 'new' album, or a remake of Twain's 2001 album entitled "The Complete Limelight Sessions." A Limelight press release represents that this project was completed, but no album appears to have been produced.

[118] Whether or not Limelight was engaged in any legitimate business projects, we find that its principal business was trading in its securities. Limelight does not appear to have any financial resources and does not appear to be in business any longer.

C. ANALYSIS OF PRELIMINARY ISSUES

1. The Commission's Mandate

[119] The Commission's mandate is found in section 1.1 of the Act. That section provides as follows:

> 1.1 The purposes of this Act are,
>
> (a) to provide protection to investors from unfair, improper or fraudulent practices; and
>
> (b) to foster fair and efficient capital markets and confidence in capital markets.

[120] Both purposes are at issue in this matter, and will frame our consideration of the issues.

2. Actions Contrary to the Public Interest

[121] Section 127 of the Act gives the Commission authority to make certain orders against participants in the capital markets if it finds that they have acted contrary to the public interest. The purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventative, intended to be exercised to prevent likely future harm to Ontario's capital markets (*Re Mithras Management* (1990), 13 O.S.C.B. 1600 at 1610).

[122] The Commission does not need to find a breach of the Act to make a finding of conduct contrary to the public interest so as to invoke the Commission's public interest jurisdiction under section 127 (*Re Canadian Tire Corp.* (1987), 10 O.S.C.B. 857 at p. 933, aff'd (1987), 59 O.R. (2d) 79 (Div. Ct.)).

3. Standard of Proof

[123] Staff submits that the standard of proof in this case is the "balance of probabilities." Because the Respondents are not registrants, Staff submits that it is not required to show proof that is "clear and convincing and based upon cogent evidence."

[124] In *Re Lett* (2004), 27 O.S.C.B. 3215 ("*Lett*"), the Commission considered this issue and made the following comments with respect to the required proof:

> Requiring proof that is "clear and convincing and based upon cogent evidence" has been accepted as necessary in order to make findings involving discipline or affecting one's ability to earn a livelihood.

> This is not such a hearing. Rather, it is a hearing to determine whether or not the Respondents traded in securities without registration contrary to section 25(1) of the Act.
>
> In *Bernstein v. College of Physicians and Surgeons (Ontario)* (1977), 15 O.R. (2nd) 477 at 470 (Div.Ct.). O'Leary J. stated:
>
> > In all cases, before reaching a conclusion of fact, the Tribunal must be reasonably satisfied that the fact occurred, and whether the Tribunal is so satisfied will depend on the totality of the circumstances involving the nature and consequences of the fact or facts to be proved, the seriousness of an allegation made, and the gravity of the consequences that will flow from a particular finding.
>
> In making our decision herein, we will have regard to that direction.
>
> (*Re Lett* (2004), 27 O.S.C.B. 3215, at para. 31-34)

[125] Similarly, in *Re ATI Technologies Inc.* (2005), 28 O.S.C.B. 8558 ("*ATI*"), the Commission stated:

> While the standard of proof in administrative proceedings is the civil standard of the balance of probabilities, Staff conceded that, this being an alleged violation of subsection 76(1) of the Act, it could only discharge its burden by clear and convincing proof based on cogent evidence.
>
> This standard of proof was recently affirmed in *Investment Dealers Assn. of Canada v. Boulieris* (2004), 27 O.S.C.B. 1597 (Ont. Securities Comm.) at paras. 33 and 34, affirmed *Investment Dealers Assn. of Canada v. Boulieris*, [2005] O.J. No. 1984 (Ont. Div. Ct.) where the Commission considered the standard required for proving a serious complaint against a person. The Commission noted in that case that the standard of proof and the nature of the evidence which is required to meet that standard, are integral to the duty of administrative tribunals to provide a fair hearing.
>
> We accept, as a matter of a fundamental fairness, that reliable and persuasive evidence is required to make adverse findings where those findings will have serious consequences for a respondent.
>
> (*Re ATI Technologies Inc.* (2005), 28 O.S.C.B. 8558, at para. 13)

[126] We agree with these statements from *Lett* and *ATI*. Given the potentially serious impact that orders under section 127 may have on the Respondents in this matter, we conclude that Staff must prove its case, on a balance of probabilities, based on clear, convincing and cogent evidence.

D. FINDINGS ON THE MERITS

1. Trading Contrary to Registration and Distribution Requirements

(i) Registration

[127] Subsection 25(1) of the Act states that no person or company shall "trade in a security" unless the person or company is registered under the Act.

[128] None of the Respondents is registered under the Act to trade in securities.

(ii) Trade

[129] Subsection 1(1) of the Act defines the term "trade." A trade includes "any sale or distribution of a security for valuable consideration" and "any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing."

[130] An act in furtherance of a trade must have a sufficiently proximate connection to a trade in securities. The Commission stated in *Re Costello* (2003), 26 O.S.C.B. 1617:

> There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade.
>
> (*Re Costello* (2003), 26 O.S.C.B. 1617, at para. 47)

[131] In determining whether a person or company has engaged in acts in furtherance of a trade, the Commission has taken "a contextual approach" that examines "the totality of the conduct and the setting in which the acts have occurred." The primary consideration is, however, the effect of the acts on investors and potential investors. The Commission considered this issue in *Re Momentas Corporation* (2006), 29 O.S.C.B. 7408, at paras. 77-80, noting that "acts directly or indirectly in furtherance of a trade" include (i) providing promotional materials, agreements for signature and share certificates to investors, and (ii) accepting money; a completed sale is not necessary. In our view, depositing an investor cheque in a bank account is an act in furtherance of a trade.

[132] We find that Limelight and the other Respondents promoted and sold Limelight shares to investors in ten provinces and other jurisdictions. The Commission has jurisdiction over trading in securities in Ontario, and that jurisdiction extends to acts in furtherance of a trade that occur in Ontario even if the investor or potential investor is located outside Ontario (*Gregory & Co. Inc. v. Quebec Securities Commission*, [1961] S.C.R. 584 ("*Gregory*"), and *Re Allen* (2005), 28 O.S.C.B. 8541).

[133] In this case, while a number of sales of shares were made to investors outside Ontario, substantial elements of those trades occurred in this Province. Limelight carried on business in Toronto and most of the activities involved in the sales of shares to investors took place in

Ontario. Limelight has its registered office in Toronto. Limelight's offices and operations were based in Toronto. Promotional materials, share purchase agreements, share certificates and other materials were mailed to investors from Toronto. The telephone calls made by the Respondents in connection with sales of Limelight shares were made from Limelight's Toronto offices and cheques in payment for the purchase of Limelight shares were sent to Toronto and deposited in a Toronto bank. These acts in furtherance of trades were directly linked to sales of shares. Accordingly, we find that we have jurisdiction over those trades. Limelight also sold shares to 71 investors in Ontario.

[134] Accordingly, we find that Limelight, Da Silva, Campbell and Daniels engaged in numerous trades and acts in furtherance of trades in Ontario.

(iii) Registration

[135] Pursuant to subsection 25(1) of the Act, a person or company is prohibited from trading in securities unless the person is registered. The requirement that an individual be registered in order to trade in securities is an essential element of the regulatory framework with the purpose of achieving the regulatory objectives of the Act. Registration serves an important gate-keeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public. Through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.

[136] In discussing the registration requirement, the Supreme Court of Canada in *Gregory* said the following:

> 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.
>
> (*Gregory*, *supra*, at paras. 11-15)

[137] Based on the evidence before us, we find that each of the Respondents traded in Limelight shares without being registered under the Act. For the reasons given below, we also find that no exemption from the registration provisions of the Act was available to the Respondents in respect of those trades.

(iv) Distribution

[138] "Distribution," is defined in subsection 1(1) of the Act and includes a trade in securities of an issuer that have not been previously issued.

[139] Subsection 53(1) of the Act states that no person or company shall trade in a security "if the trade would be a distribution of the security", unless a prospectus has been filed with and receipted by the Commission. The requirement to comply with section 53 of the Act is important

because a prospectus ensures that prospective investors have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed investment decision. The prospectus requirements of the Act play a significant role in the overall scheme of investor protection. As stated by the court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.) (at p. 5590), "there can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares."

[140] Based on the evidence, we find that previously unissued Limelight shares were sold to investors and that such trades were distributions within the meaning of the Act.

[141] We also find that Limelight did not file any prospectus to qualify the shares sold to investors.

(v) Accredited Investor Exemption

[142] Staff has established that the Respondents traded without registration and distributed shares without qualifying those shares under a prospectus. Having done so, the onus shifts to the Respondents to prove that an exemption from those requirements was available in the circumstances (*Re Euston Capital Corp.*, 2007 ABASC 75, *Re Lydia Diamond Exploration of Canada Ltd.* (2003), 26 O.S.C.B. 2511, and *Re Ochnik* (2006), 29 O.S.C.B. 3929). The Respondents purported to rely upon the "accredited investor" exemption in OSC Rule 45-501.

[143] The relevant portions of the definition of "accredited investor" provide as follows:

> "accredited investor" means …
>
> (j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1,000,000,
>
> (k) an individual whose net income before taxes exceeded $200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,
>
> (l) an individual who, either alone or with a spouse, has net assets of at least $5,000,000, ...

[144] The Agreed Statement states, "The vast majority of Limelight investors are not accredited investors." This is corroborated by oral and affidavit evidence that Limelight and its salespersons did not even enquire into the financial status of prospective investors to determine whether they qualified as accredited investors. Based on the evidence before us, we are not satisfied that Investor One, Investor Two, Investor Three, Investor Four, Investor Five or Investor Six qualified for the accredited investor exemption. We conclude that the Respondents have not satisfied the onus on them to demonstrate that the accredited investor exemption or any other

registration or prospectus exemption was available to them in connection with the trading in and distribution of Limelight shares.

[145] Even if the purchasers of Limelight shares had been accredited investors, that exemption is not available to a "market intermediary," which is defined in OSC Rule 14-501 – *Definitions* as "a person or company that engages or holds himself, herself or itself out as engaging in the business of trading in securities as principal or agent." The Companion Policy to that Rule provides that:

> The [Ontario Securities] Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities, the issuer and its employees are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities, the Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

[146] Based on the evidence of Simonsen and Moore, we find that Limelight employed several employees, including Simonsen, Moore and Daniels, who, despite initial statements to the contrary made by Da Silva to Staff, were involved solely in selling Limelight shares to investors. Therefore, in our view, Limelight and its employees were acting as market intermediaries in these circumstances, without registration, in breach of subsection 25(1) of the Act.

[147] Accordingly, we find that Limelight, Da Silva, Campbell and Daniels each contravened subsections 25(1) and 53(1) of the Act. The specific allegations against each Respondent are discussed below.

(vi) Limelight

[148] We accept the evidence of the four Ontario investors who purchased previously unissued Limelight shares from Da Silva, Campbell and other Limelight salespeople. Masci's affidavits also provided evidence that Limelight shares were sold to an additional three New Brunswick investors. There is no evidence before us that any of these investors was an accredited investor.

[149] Limelight has never been registered with the Commission and no exemption from registration is available to it. We therefore conclude that Limelight traded in shares of Limelight without being registered, in breach of subsection 25(1) of the Act. Limelight has made illegal distributions of its shares to investors because a prospectus was not filed and no prospectus exemption was available. Therefore, Limelight contravened subsection 53(1) of the Act.

(vii) Da Silva

[150] In the Agreed Statement, Da Silva admits that he traded in Limelight shares between April 2004 and May 2006. This is corroborated by the evidence. Moore testified that he observed

Da Silva making a sales pitch to one of Moore's potential investors. Investor One testified that Da Silva was his contact person at Limelight after he purchased shares. When Investor One asked Da Silva to repurchase his shares, Da Silva refused, and encouraged him to sell his AccessMed shares, but they could not be traded. Investor Two swore that Da Silva solicited him to purchase Limelight shares and sold Limelight shares to him for a consideration of $12,000. When Investor Four requested that Da Silva repurchase his Limelight shares, Da Silva stated, amongst other things, that he could soon exchange his Limelight shares for shares of "U.S. Limelight." Investor Six also told Masci that Da Silva sold Limelight shares to him.

[151] In forms filed with the Commission and during interviews with Staff, Da Silva represented that Limelight relied on the accredited investor exemption in effecting sales of its shares. In the Agreed Statement, Da Silva admits that the "vast majority" of the investors in Limelight were not accredited investors, and that Limelight salespersons made no effort to determine whether or not potential investors qualified for that exemption. Da Silva also admits in the Agreed Statement to not being registered with the Commission since June 2000.

[152] Accordingly, we find that Da Silva traded in Limelight shares in breach of subsection 25(1) of the Act. As the Limelight shares had not been previously issued, Da Silva also contravened subsection 53(1) of the Act by distributing shares without filing a prospectus, where no prospectus exemption was available.

(viii) Campbell

[153] Consistent evidence about Campbell's involvement in the trading of Limelight shares came from the Agreed Statement, the testimony of Moore, Simonsen and Investor One, and the affidavit evidence of Investor Four. We find that Campbell was responsible for the day-to-day operations of Limelight. This included hiring and training the sales force. He provided the salespersons with scripts, attempted to motivate them to sell shares and periodically demonstrated sales techniques.

[154] The documentary evidence, including bank deposit slips, also shows that Campbell deposited cheques from investors in Limelight's bank accounts.

[155] Campbell has never been registered under the Act and no exemption from registration is available to him. He therefore traded in shares of Limelight without registration, in breach of subsection 25(1) of the Act. Shares sold by Campbell directly or indirectly through Limelight salespersons were illegal distributions under the Act because a prospectus was not filed and no prospectus exemption was available. Campbell therefore also contravened subsection 53(1) of the Act.

(ix) Daniels

[156] Much of Staff's evidence against Daniels is hearsay. Masci swore in two affidavits that he spoke by telephone to Investor Five and Investor Six, to whom he was referred by LeBlanc, but he did not obtain an affidavit from either investor. Investor Six told Masci he was contacted by Daniels in May, 2006 and solicited to purchase shares at $1 per share. In addition, Masci's affidavit states that LeBlanc told him that Investor Five was contacted by Daniels on or about April 14, 2006.

[157] There is documentary evidence that supports Masci's affidavits. First, Staff submitted a fax from Daniels to another investor ("Investor Seven"), dated April 11, 2007, thanking him for his investment and enclosing a receipt for the shares purchased. In addition, Staff submitted as evidence courier receipts showing packages addressed to Limelight and Daniels both before and after the issuance of the First Temporary Order; these were sent to Limelight's Toronto mailbox. There is also evidence of more than 450 telephone calls to persons in all ten provinces from a telephone number registered to Limelight. That telephone number was given by Daniels as the contact number at the bottom of his faxed confirmation to Investor Seven. Investor Five and Investor Six were not accredited investors and no prospectus was filed in respect of the shares sold to them.

[158] Daniels has never been registered in any capacity with the Commission and there is no evidence that any registration exemption is available to him. We therefore conclude that Daniels traded in shares of Limelight without registration in breach of subsection 25(1) of the Act. Further, by distributing shares where no prospectus was filed and no exemption was available, Daniels contravened subsection 53(1) of the Act.

2. Breach of Subsections 38(2) and 38(3) of the Act

(i) Subsections 38(2) and 38(3)

[159] Subsection 38(2) of the Act states:

> No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

[160] Subsection 38(3) of the Act states:

> Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system, unless,
>
> > (a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any stock exchange or quoted on any quotation and trade reporting system; or
> >
> > (b) the stock exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

[161] The language in subsections (2) and (3) is different: while subsection 38(3) prohibits a "representation" as to listing, subsection 38(2) prohibits an "undertaking" as to future value of a

security. We invited Staff and Da Silva to file written submissions on the scope of subsection 38(2). Staff responded by letter dated October 23, 2007. Da Silva did not respond.

(ii) Staff Submissions on Subsection 38(2)

[162] Staff submits that an "undertaking" falls somewhere on the legal continuum between a representation and an enforceable legal obligation. In Staff's submission, an undertaking is a representation that amounts to a promise, guarantee or assurance as to the future value of a security. Staff submits, however, that an undertaking need not give rise to legal recourse against the person giving the undertaking. An undertaking is more than a mere representation but may be less than an enforceable obligation. In support of this interpretation, Staff notes that subsection 38(1) of the Act (representation that the seller will resell or repurchase or refund the purchase price of any security) does not apply where the security has an aggregate acquisition cost of more than $50,000 and "the representation is contained in an enforceable written agreement."

[163] Staff also submits that a contextual and purposive approach should be taken to interpreting subsection 38(2), because the purpose of that section is investor protection, and because representations as to future value are often made to vulnerable and unsophisticated investors and associated with other representations such as a representation as to the future listing of shares on an exchange. As a result, Staff submits that it is necessary to examine all of the surrounding circumstances in order to determine whether a representation amounts to a promise, guarantee or assurance and is therefore an undertaking within the meaning of subsection 38(2) of the Act.

(iii) Conclusion on Subsection 38(2)

[164] We agree that something less than a legally enforceable obligation can be an "undertaking" within the meaning of subsection 38(2), depending on the circumstances. We also accept Staff's submission that we should not take an overly technical approach to the interpretation of subsection 38(2) and that we should consider all of the surrounding circumstances and the Commission's regulatory objectives in interpreting the meaning of that section.

[165] We found the decision in *Re National Gaming Corp*. (2000), 9 A.S.C.S. 3570 ("*National Gaming*") to be helpful on this issue. The Alberta Securities Commission (the "ASC") stated:

> … an undertaking is a promise, assurance or guarantee of a future price or value of securities that can be reasonably interpreted as providing the purchaser with a contractual right against the person giving the undertaking if, for any reason, the value or price is not achieved.
>
> (*Re National Gaming Corp*. (2000), 9 A.S.C.S. 3570, at p. 16)

[166] In the same decision, the ASC also stated:

> In interpreting subsection 70(3)(a), we are mindful of the fact that predictions relating to the future value or price of securities are commonplace in the securities industry, and are not prohibited by the Act. Predictions encompass a broad

> spectrum. They range from very general predictions about the entire market, to very specific predictions about the value or price of a particular security within a particular time frame. Some predictions are developed with extreme care, based on rigorous, professional research and scientific analysis based on sophisticated market theory. Other predictions may be based on no more than wishful thinking or guesswork. In our view, the shared element of all predictions is that they are merely opinions.
>
> (*Re National Gaming Corp*. (2000), 9 A.S.C.S. 3570, at p. 16)

[167] Finally, the ASC stated that in determining whether a representation amounted to an undertaking, the context of the statement must be considered, and the "undertaking" must be given a "functional interpretation" in keeping with the objective of protecting investors. Accordingly, the ASC held it was not necessary to show that all the elements of an enforceable contract existed. The ASC concluded in *National Gaming* that no undertaking with respect to future value was given in the circumstances.

[168] In *Securities Law and Practice* (Borden Ladner Gervais LLP, *Securities Law and Practice*, 3rd ed., looseleaf (Toronto: Thomson Canada Limited, 2007) (WLeC)), it is stated that: "the prohibition in s. 38(2) appears to be justifiably narrow since trading in securities is necessarily based on statements concerning the future value or price of securities; as long as they are not construed as undertakings, s. 38(2) would not be breached."

[169] We agree with the approach of the ASC in *National Gaming* and the statement of the law from *Securities Law and Practice*.

[170] In our view, a mere representation as to future value is not an "undertaking" within the meaning of subsection 38(2) of the Act. Prohibiting all representations as to the future value of securities would ignore the reality of the marketplace.

[171] In this case, considering all of the circumstances, we do not believe that potential Limelight investors would have understood that the representations made to them as to the future value of Limelight shares amounted to a promise, guarantee or assurance of future value. The words used by the Limelight salespersons did not suggest that something more than a representation was being made or an opinion given. There is no evidence of any promise or assurance given to repurchase the securities or refund the purchase price if a certain value was not achieved. Accordingly, we do not view the representations as to future value given in this case to be "undertakings" within the meaning of subsection 38(2) of the Act.

[172] That does not mean, however, that we accept Limelight's sales practices.

[173] According to the evidence of Moore and Simonsen, the salespersons at Limelight made constant use of "scripts" provided to them by Campbell. Moore testified that "I would follow it almost verbatim for the first week when calling investors, potential investors."

[174] The Agreed Statement describes the use of scripts this way:

> Salespersons received scripts from David Campbell to use when salespersons spoke to investors. There was a script for cold calls, a script for persons who had already spoken to a qualifier, a call back script for prospective investors to whom a salesperson had spoken to on more than one occasion and a final order pitch script. Salespersons also received sheets which contained suggested wording to use when speaking to investors and sheets which had suggested responses for dealing with investors who (i) were not interested; (ii) wanted to speak to their spouse; (iii) had no money; (iv) wanted to speak to their broker; or (v) wanted to read the investor information.

[175] Though Da Silva advised Staff that he did not know about the use of scripts by Limelight's salespersons, it is clear to us that the purpose of the scripts was to use high pressure tactics to sell shares to investors and to provide a response to every objection a potential investor might raise. The scripts provide a road map of the sales practices used by Limelight and its salespersons.

[176] We have heard or received evidence from several investors who testified or swore that Da Silva, Campbell and other Limelight salespersons made representations as to the future value of Limelight shares. Moore testified that he told potential investors that they could make "three or four times the money", but sometimes heard other salespersons say "ten times." In addition, the Agreed Statement states that some investors were told that the Limelight share value was expected to rise to "$3 to $10 per share once Limelight went public."

[177] The scripts do not make explicit promises regarding the future value of Limelight shares, but they do predict a substantial rate of growth. For example, salespersons would recount one "success story", "Dynamic Fuels", in which a stock that opened at $7 on the TSX was originally sold privately for $0.75 per share. One script states: "We feel LM is going to do better than Dynamic ever could." The investor is then warned that "keep in mind you missed out on Dynamic, I don't want you to miss out on this one."

[178] It is also clear that misrepresentations were made about Limelight's business, the use of the proceeds of sales and whether salespersons were paid commissions. We conclude that Limelight salespersons, using scripts and high pressure sales tactics, were prepared to make almost any representation as to the future value of the Limelight shares in order to effect a sale.

[179] In *Re First Global Ventures, S.A.* (2007), 30 O.S.C.B. 10473 ("*First Global*"), the Commission made the following comment with respect to high pressure sales tactics:

> High pressure sales tactics encompass a broad range of activity that has the effect of persuading individuals to invest inappropriately. A key characteristic of high pressure sales tactics is that these tactics put individuals in a position where they are pressured to make a decision quickly because the investment opportunity may disappear. High pressure sales tactics include, but are not limited to, selling tactics designed to induce, and having the effect of inducing, clients to purchase securities inappropriate to their situation on the basis of inadequate investment information and/or misinformation as to the issuers of the securities, the value of the securities, and the prospects of the issuer and the securities. Comments that give the impression that shares are attractive and quick action is needed because

> an investment opportunity will expire in a short time frame and repeatedly calling investors to get them to make an investment decision quickly based on misleading information also qualify as high pressure sales tactics.
>
> (*Re First Global Ventures, S.A.* (2007), 30 O.S.C.B. 10473)

[180] We consider the representations made by the Respondents with respect to the future value of the Limelight shares, together with their use of high pressure sales tactics, to be improper and unacceptable. We conclude that these representations and the high pressure sales tactics employed by Limelight, Da Silva and Campbell were contrary to the public interest.

(iv) Subsection 38(3)

a) Limelight

[181] There is ample evidence from investors that Limelight's salespersons stated that Limelight shares would be listed on an exchange. The time frames given ranged from 10 to 12 days to a year. Both Simonsen and Moore confirmed that such representations were regular practice. The Agreed Statement states that "David Campbell advised Limelight's salespersons that Limelight was raising money for the purpose of going public. Limelight salespersons in turn advised prospective investors that Limelight would be going public and that its shares would be listed on a stock exchange in order to effect sales of Limelight shares." No one has suggested that the Director gave permission under the Act to make those representations, as permitted under subsection 38(3) of the Act. We are satisfied on the evidence that Limelight through its salespersons made representations as to the future listing of Limelight shares on a stock exchange for the purpose of effecting trades in Limelight shares contrary to subsection 38(3) of the Act.

b) Da Silva

[182] Investor Two swore in his affidavit that Da Silva represented to him that Limelight shares would be listed on an exchange within six months. In addition, as noted above, in the Agreed Statement Da Silva states that Limelight and its salespersons represented that Limelight would be listed on a stock exchange.

[183] Section 129.2 of the Act states that a director or officer of a corporation is deemed to have breached Ontario securities law if he or she authorizes, permits, or acquiesces in a breach of Ontario securities law by the corporation. In the circumstances, we believe that there is sufficient evidence to conclude that Da Silva was aware of the representations as to listing being made by Limelight salespersons. At the least, he authorized, permitted or acquiesced in those representations. Accordingly, we find that Da Silva made a representation to at least one investor in breach of subsection 38(3) of the Act and that he authorized, permitted or acquiesced in breaches of subsection 38(3) by Limelight and its salespersons.

c) Campbell

[184] It is clear on the evidence that Campbell was directly responsible for the sales tactics used by Limelight and its salespersons. The Agreed Statement states that "David Campbell

advised Limelight's salespersons that Limelight was raising money for the purpose of going public. Limelight salespersons in turn advised prospective investors that Limelight would be going public and that its shares would be listed on a stock exchange in order to effect sales of Limelight shares." The scripts given by Campbell to salespersons confirm this. Further, Investor Four swears in his affidavit that Campbell represented to him that Limelight shares would be listed on the TSX. In addition, Investor One testified that Campbell or Ulfan represented to him that Limelight would soon be going public. Accordingly, we find that Campbell made representations contrary to subsection 38(3) of the Act. Campbell also authorized, permitted or acquiesced in the breach by Limelight of subsection 38(3) of the Act.

d) Daniels

[185] The only evidence that was submitted regarding improper representations made by Daniels was through Masci's affidavit evidence concerning Investor Six. This evidence was not corroborated in any way and, in our view, is not sufficiently reliable. We therefore conclude that there is insufficient evidence to find that Daniels made representations contrary to subsection 38(3) of the Act.

3. Misleading Statements to Staff

(i) The Law

[186] Staff alleges that Limelight, Da Silva and Campbell made misleading statements to Staff during interviews conducted by Staff, contrary to clause 122(1)(a) of the Act. That clause states that:

> Every person or company that,
>
> (a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;
>
> . . . .
>
> is guilty of an offence and on conviction is liable to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

(ii) Findings

a) Da Silva

[187] In the Agreed Statement, Da Silva admits to advising Staff that Limelight shares were sold only to accredited investors. That statement is contradicted by a number of investors, none of whom were accredited investors, and by the testimony of Simonsen and Moore. In the Agreed

Statement, Da Silva acknowledges that, in fact, "the vast majority of Limelight investors are not accredited investors."

[188] The Agreed Statement states that Da Silva also advised Staff during its interview on December 13, 2005 that no scripts were used at Limelight, Limelight salespersons always inquired to confirm that all sales of Limelight shares were made to accredited investors, and Limelight's salespersons also acted as project managers. Da Silva has admitted that these statements were false and misleading and this admission has been confirmed by witnesses and documentary evidence.

[189] Accordingly, we find that Da Silva lied to and misled Staff in its investigation contrary to clause 122(1)(a) of the Act.

b) Campbell

[190] Staff called evidence regarding misleading statements made by Campbell when interviewed by Staff. Staff has stated that they will address the issue of Campbell's misleading statements during the hearing on sanctions.

[191] Campbell, in his interview, told Staff that no scripts were used at Limelight. As stated above, it is clear from the evidence, which included copies of the scripts and the testimony of Moore and Simonsen explaining them, that scripts were used. In addition, Campbell told Staff that he told salespersons not to make representations as to the future value of Limelight shares or as to the listing of such shares on a stock exchange.

[192] As discussed above, we have found that the salespersons at Limelight made repeated representations as to the future listing of Limelight shares on a stock exchange. The scripts provided to the salespersons by Campbell, as well as the 'rebuttal sheets', mention both future listing and future share price. As the day-to-day manager of the business of Limelight, Campbell would have known that these statements were being made and that they were false and misleading.

[193] Accordingly, we find that Campbell lied to and misled Staff in its investigation contrary to clause 122(1)(a) of the Act.

4. Misleading Reports of Exempt Distributions

[194] Staff alleges that the forms filed by Limelight with the Commission in connection with the distributions made by Limelight were misleading or untrue in a material respect, contrary to clause 122(1)(b) of the Act. That clause states that:

> Every person or company that,
>
> . . . .
>
> (b) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the

> light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;
>
> . . . .
>
> is guilty of an offence and on conviction is liable to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

[195] In the Agreed Statement, Da Silva admitted that the vast majority of Limelight investors were not accredited investors, and that Limelight purported to rely on the accredited investor exemption though it was not available. Furthermore, the evidence shows that Limelight's salespersons made no effort to enquire into the financial position of prospective investors to determine whether they would qualify as accredited investors. It was Limelight's responsibility to do so.

[196] The evidence shows that Limelight made filings with the Commission of forms required to be filed under the Act that misrepresented the dates of various trades and the exemption relied upon and failed to disclose the payment of commissions and other fees, as required. Accordingly, we find that Limelight's filings, signed and certified by or on behalf of Da Silva, were false and misleading.

[197] Accordingly, we find that Limelight and Da Silva made statements in documents required to be filed under Ontario securities law that contravened clause 122(1)(b) of the Act.

5. Violation of the Temporary Order

[198] Staff alleges that Limelight, Da Silva, Campbell and Daniels continued to sell and trade in Limelight shares after the First Temporary Order was issued on April 13, 2006.

(i) The Law

[199] Clause 122(1)(c) of the Act provides as follows:

> Every person or company that,
>
> . . . .
>
> (c) contravenes Ontario securities law,
>
> is guilty of an offence and on conviction is liable to a fine of not more than $5 million or to imprisonment for a term of not more than five years less a day, or to both.

[200] "Ontario securities law" is defined in subsection 1(1) of the Act to include "… in respect of a person or company, a decision of the Commission or a Director to which the person or company is subject." The First Temporary Order and the Amended Temporary Order constitute decisions of the Commission under section 127 of the Act. Accordingly, any breach by the

Respondents of the First Temporary Order or the Amended Temporary Order contravenes Ontario securities law.

(ii) Findings

[201] The First Temporary Order was issued on April 13, 2006 and ordered Limelight, Da Silva, Campbell and Moore to cease trading in all securities, and that any exemptions available in Ontario securities law do not apply to them. It also ordered "that all trading cease in the securities of Limelight." The Amended Temporary Order, issued on April 26, 2006, extended the terms of the First Temporary Order, and ordered Daniels to cease trading in all securities and that any exemptions available in Ontario securities law do not apply to him.

[202] The Agreed Statement includes the following admissions:

> Carlos Da Silva was solely authorized to withdraw money from Limelight's bank accounts until he resigned on or about April 17, 2006. At that time, David Campbell obtained signing authority over the Limelight bank account.
>
> Two investor cheques totalling $4,500 were deposited by Carlos Da Silva at 5:27 p.m. on April 13, 2006 while he was president of Limelight and one investor cheque for $400 was deposited by Carlos Da Silva on April 20, 2006. Investor cheques totalling $86,750 were deposited by David Campbell on April 21, 24, 26, 28, May 2, 4, 8, 11, 12, 16 and 18 and June 1, 2006. Other investor cheques totalling $7,100 were deposited on April 24 and 25, 2006 by persons whose signatures have not been identified.

[203] Da Silva's admissions in the Agreed Statement are corroborated by Limelight's bank records. In our view, depositing these cheques in Limelight's bank account constituted acts in furtherance of trades that, depending on the date of deposit, were prohibited by the First Temporary Order or the Amended Temporary Order.

[204] Further, Limelight's telephone records show that several hundred calls were made after April 13, 2006. Purolator receipts show that Limelight continued to send information to potential investors and receive investor cheques after April 13, 2006.

[205] The Agreed Statement also states: "After the Temporary Order, Limelight, David Campbell, and Limelight salespersons continued to solicit investors and receive investor cheques after the Temporary Order. These activities were in breach of the Temporary Order." This assertion is corroborated by evidence that Campbell deposited cheques from investors in Limelight's bank account after April 13, 2006, as described above. As sole director and president, Campbell was solely responsible for the actions of Limelight following Da Silva's resignation.

[206] The initial motion for the First Temporary Order was made on notice to Limelight, Da Silva and Campbell, and they were served with the Notice of Hearing, Statement of Allegations, and affidavits of the investigator and two investors. They appeared by counsel at the Commission hearing on April 13, 2006, and did not oppose the First Temporary Order. The Amended Temporary Order was binding on all of the Respondents.

[207] We find that Limelight breached the First Temporary Order by continuing to trade after the First Temporary Order was issued, that Da Silva breached the first Temporary Order by depositing cheques in Limelight's bank account on April 13 and April 20, and that Campbell breached the Amended Temporary Order by depositing cheques in Limelight's bank account on April 26 and thereafter. We also find that Da Silva and Campbell authorized, permitted or acquiesced in Limelight's breach of the First Temporary Order and the Amended Temporary Order. We are not satisfied, however, that Staff has submitted sufficient, clear, convincing and cogent evidence to prove that Daniels breached the First Temporary Order or the Amended Temporary Order.

E. CONDUCT CONTRARY TO THE PUBLIC INTEREST

[208] From April 2004 to May 2006, Limelight, Da Silva and Campbell sold approximately 1.6 million Limelight shares to investors. As a result of these sales, Limelight raised approximately $2.75 million from investors in all ten provinces of Canada and outside Canada. It is clear that the Respondents were acting in concert with a common purpose in making these sales of Limelight shares to investors. In carrying out that common purpose, they preyed on investors with limited resources and financial experience and breached key provisions of the Act intended to protect those investors. The investors appear to have lost their entire investments.

[209] We have found that Limelight, Da Silva, Campbell and Daniels illegally traded without registration and engaged in illegal distributions. Their purported reliance on the "accredited investor" exemption was little more than a smoke screen for their blatant disregard of Ontario securities law.

[210] In addition, Limelight, Da Silva and Campbell made prohibited representations with respect to the future listing of Limelight shares on a stock exchange and used high pressure sales tactics that included improper and unacceptable representations as to the future value of Limelight shares.

[211] In carrying out their illegal purpose, Limelight and Da Silva filed false and misleading reports with the Commission.

[212] Further, when called to account, Da Silva and Campbell misled Staff about their conduct and that of Limelight. And when the Commission issued its First Temporary Order to protect investors from further harm, Limelight, Da Silva and Campbell blatantly ignored it and continued to illegally trade in Limelight shares.

[213] In conclusion, the Respondents breached a number of key provisions of the Act intended to protect investors. Their conduct was egregious. It caused great harm to investors and to the integrity of Ontario's capital markets, and was clearly contrary to the public interest.

F. CONCLUSIONS

[214] Accordingly, for the reasons given above , we make the following findings.

[215] We find that Limelight, Da Silva, Campbell and Daniels contravened subsection 25(1) of the Act by trading in Limelight shares without registration where no exemption was available;

[216] We find that Limelight, Da Silva, Campbell and Daniels contravened subsection 53(1) of the Act by distributing previously unissued Limelight shares when no prospectus was filed and no exemption was available;

[217] We are not satisfied that Limelight, Da Silva and Campbell gave undertakings regarding the future value of Limelight shares contrary to subsection 38(2) of the Act, but we find that they made representations and used high pressure sales tactics that were contrary to the public interest;

[218] We find that Limelight, Da Silva and Campbell make representations regarding the future listing of Limelight shares, with the intention of effecting sales of Limelight shares, contrary to subsection 38(3) of the Act, but we are not satisfied that Staff met its burden of proving that Daniels did so;

[219] We find that Da Silva lied to and misled Staff, contrary to clause 122(1)(a) of the Act;

[220] We find that Limelight and Da Silva filed misleading and untrue reports of exempt distributions with the Commission contrary to clause 122(1)(b) of the Act;

[221] We find that Limelight, Da Silva and Campbell breached the First Temporary Order and that Limelight and Campbell breached the Amended Temporary Order contrary to clause 122(1)(c) of the Act, but we are not satisfied that Staff met its burden of proving that Daniels breached either order; and

[222] We find that Limelight, Da Silva, Campbell and Daniels acted contrary to the public interest by breaching important provisions of the Act intended to protect investors.

[223] The parties are directed to contact the Office of the Secretary within the next 10 days to set a date for a sanctions hearing, failing which a date will be set by the Office of the Secretary.

DATED at Toronto this 12th day of February, 2008.

"James E. A. Turner"	"Suresh Thakrar"
James E. A. Turner	Suresh Thakrar