



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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

**AND**

**IN THE MATTER OF RODNEY INTERNATIONAL,  
CHOEUN CHHEAN (ALSO KNOWN AS PAULETTE C. CHHEAN) AND  
MICHAEL A. GITTENS (ALSO KNOWN AS ALEXANDER M. GITTENS)**

**REASONS AND DECISION**

**Hearing:** September 18, 2008

**Decision:** November 19, 2008

**Panel:** Wendell S. Wigle, Q.C. - Commissioner and Chair of the Panel  
Suresh Thakrar - Commissioner

**Counsel:** Matthew Britton - For the Ontario Securities Commission

## REASONS AND DECISION

### I. BACKGROUND

[1] This was a hearing before the Ontario Securities Commission (the “Commission”) to decide whether Rodney International (“Rodney”) and Michael A. Gittens (also known as Alexander M. Gittens) (“Gittens”) breached the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) and acted contrary to the public interest, during April and March 2008, by (i) trading securities without being registered in accordance with Ontario securities law, contrary to section 25(1)(a) of the Act; and (ii) distributing securities without a preliminary prospectus and a prospectus having been filed and receipts having been issued by the Director, contrary to subsection 53(1) of the Act.

[2] On June 4, 2008, the Commission issued a temporary order (the “Temporary Order”) that: (i) pursuant to clause 2 of subsection 127(1) of the Act, all trading in securities of Rodney shall cease; (ii) pursuant to clause 2 of subsection 127(1) of the Act, all trading by Rodney, Gittens and Choeun Chhean (also known as Paulette C. Chhean) (“Chhean”) shall cease; and (iii) pursuant to clause 3 of section 127(1) of the Act, the exemptions contained in Ontario securities law do not apply to Rodney, Gittens or Chhean (the “Original Respondents”). The Temporary Order was continued pending the release of the sanctions decision.

[3] The proceeding was commenced by a Statement of Allegations and Notice of Hearing dated June 5, 2008.

[4] At the conclusion of the hearing, the Panel gave an oral ruling, based on the uncontested evidence and submissions of Staff, that in March and April 2008, the Respondents, Gittens and Rodney, breached subsections 25(1) and 53(1) of the Act and acted contrary to the public interest, and that a sanctions hearing would be scheduled following the release of written reasons on the merits in this matter.

[5] The following are our reasons.

### II. THE RESPONDENTS’ FAILURE TO APPEAR AT THE HEARING ON THE MERITS

[6] The Original Respondents did not appear, either personally or through counsel, at any of the appearances in this matter, held on June 17, 2008, August 5, 2008 and September 4, 2008, or at the hearing on the merits, held on September 18, 2008.

[7] At the hearing on the merits, counsel for Staff of the Commission (“Staff”) advised that Staff would not be proceeding against Chhean. Staff subsequently filed a Notice of Withdrawal with respect to Chhean on October 6, 2008, effective September 18, 2008. Accordingly, we make no findings or orders with respect to Chhean.

[8] On August 5, 2008, at the request of Staff counsel, no one appearing for Rodney or Gittens (the “Respondents”), we adjourned the hearing to September 4, 2008 to give Staff additional time to attempt to serve a certified copy of the Temporary Order and the Notice of Hearing on Gittens. We also noted in our order that Staff had served the

Temporary Order and Notice of Hearing on Rodney by delivering a certified copy of the Temporary Order and Notice of Hearing to Rodney's mailing address.

[9] At the hearing on September 4, 2008, no one appeared for the Respondents. Staff advised that it had not been able to find Gittens' current address. However, Staff filed the process server's August 25, 2008 affidavit of service affirming that Gittens had been served with the Statement of Allegations, Notice of Hearing and the August 5, 2008 Temporary Order at the Windsor court house that day (August 25, 2008). The hearing on the merits was set down for September 18, 2008 and we directed Staff to attempt service of our September 4, 2008 order on Gittens as soon as possible before the hearing on the merits, and to give evidence at that time about attempted service.

[10] No one appeared for the Respondents at the hearing on the merits on September 18, 2008. Staff filed three affidavits from Mehran Shahviri ("Shahviri"), the Commission's primary investigator in this matter, sworn June 13, 2008, September 12, 2008 and September 16, 2008. Shahviri's June 13, 2008 affidavit describes the investigation in this matter, while his September 12, 2008 and September 16, 2008 affidavits concern service.

[11] Exhibit B to Shahviri's September 12, 2008 affidavit is the process server's Affidavit of Service affirming that he served Gittens with the Statement of Allegations, Notice of Hearing and August 5, 2008 Temporary Order at the Windsor court house on August 25, 2008.

[12] Staff counsel advises that Staff had made further attempts to find Gittens' address, but to no avail.

[13] In his September 16, 2008 affidavit, Shahviri affirms that on September 12, 2008, he and Staff counsel reached Gittens by telephone at the number given on the Rodney website, at which time Gittens acknowledged that he had been served with the documents (the Notice of Hearing, Statement of Allegations and Temporary Order) and suggested a meeting with Staff to discuss the matter further. An appointment was made for September 15, 2008. However, Gittens left a message on the voice-mail of Staff counsel in the early hours of September 15, 2008 stating that he would not attend the meeting and suggesting that Staff convey to the Panel that he was prepared to agree with Staff's position.

[14] In light of the circumstances, we accept that Gittens was served with the Statement of Allegations and the Notice of Hearing, as well as the August 5, 2008 Temporary Order, and that he received sufficient notice that a hearing on the merits would take place on September 18, 2008, but advised Staff that he would not attend. In the circumstances, considering Staff's inability to find Gittens' current mailing address, we are satisfied this was sufficient.

[15] Further, we accept that Gittens carries on business through Rodney, and therefore we accept that Rodney, as well as Gittens, received notice of this hearing on the merits, and chose not to participate in it.

[16] Accordingly, having satisfied ourselves that the Respondents were served with notice of this hearing, we continued with the hearing in the absence of the Respondents, as permitted pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (“SPPA”).

### **III. THE ISSUES**

[17] The issues are as follows:

1. Did Rodney and Gittens, in March and April 2008, trade securities without being registered in accordance with Ontario securities law, contrary to section 25(1)(a) of the Act?
2. Did Rodney and Gittens, in March and April 2008, distribute securities without a preliminary prospectus and a prospectus having been filed and receipts having been issued by the Director, contrary to section 53(1) of the Act?
3. Was the alleged conduct contrary to the public interest?

### **IV. THE EVIDENCE**

[18] Staff filed Shahviri’s three affidavits, along with a Document Brief, and Shahviri testified for Staff. His evidence was uncontested, and we accept it.

[19] Shahviri testified that this matter came to the attention of Staff through securities regulators in the U.S., and that Staff responded to the U.S. enquiries by determining that Gittens was not an Ontario registrant. Staff filed five section 139 certificates in relation to the various names used by Gittens, showing that no one so named has been registered to trade securities in Ontario.

[20] Shahviri explained the findings and orders of the U.S. securities regulators in his testimony.

#### **A. *Texas State Securities Board***

[21] On March 28, 2008, the Texas State Securities Board (“TSSB”) issued a cease and desist order against Rodney and Gittens in relation to the sale of securities without registration, materially misleading statements and fraud. The TSSB made the following findings of fact:

- a. Respondents Gittens and Rodney share the same address in Windsor Ontario as well as an address in Detroit Michigan.
- b. Gittens is the Senior Investment Officer of Rodney.
- c. Gittens and Rodney solicited residents of Texas to purchase an investment in the “Ulysses Project” through advertisements on Craigslist that target residents of several Texas cities.

- d. “The Ulysses Project is a debt product secured by the assets of Respondent Rodney and the value of its real estate portfolio. Respondent Gittens is the Project Manager of the Ulysses Project and he retains the exclusive authority to manage the operations and affairs of the Ulysses Project and to make all decisions regarding the business thereof.

Respondents are representing that investors in the Ulysses Project will receive a promissory note and that they will be entitled to interest ranging from 14.25% to 24.00% payable on an annual basis. Investors are told that their funds will be used by Respondents to invest in real estate projects.”

- e. Gittens and Rodney are not registered to trade in securities in Texas and neither the Ulysses Project nor any other securities traded by Gittens and Rodney are registered to be sold in Texas.
- f. Gittens and Rodney represent that Gittens holds a “360 degree certification for selling all securities in Canada.” This is materially misleading or otherwise likely to deceive the public because Gittens is not registered to sell securities in Texas and the Ontario Securities Commission has no record of Gittens having been registered in Ontario.
- g. Gittens and Rodney are representing to Texas investors that they can earn “referral income” or a “finder’s fee” ranging between \$350.00 and \$30,000.00 for each person they refer to Rodney who invests in the Ulysses Project. This representation is materially misleading or otherwise likely to deceive the public because Texas residents who refer prospective investors for a fee must comply with requirements under Texas securities legislation.
- h. Gittens and Rodney are representing that Gittens is entitled to receive a monthly fee after interest payments have been disbursed to investors. This representation is materially misleading or otherwise likely to deceive the public in light of the fact that Respondents fail to disclose the amount of the monthly fee.
- i. Respondents are intentionally failing to disclose the material fact that on or about June 12, 2007, Gittens was charged with 53 offenses in Canada relating to selling or attempting to sell counterfeit watches.

[22] The TSSB reached the following conclusions of law:

- a. The investments in the Ulysses Project are “securities” under Texas securities legislation.
- b. The Respondents are violating Texas securities law by selling securities that are not registered for sale in Texas.

- c. The Respondents are violating Texas securities law by offering securities for sale in Texas without being registered pursuant to Texas securities legislation.
- d. The Respondents are making an offer containing statements that are materially misleading or otherwise likely to deceive the public.
- e. The Respondents are engaging in fraud in connection with the offer for sale of securities.
- f. The Respondents' conduct threatens immediate and irreparable public harm.

[23] Therefore, the TSSB ordered the Respondents to immediately cease and desist: (i) from offering any security for sale in Texas without its being registered or offered pursuant to an exemption from registration in Texas; (ii) from acting as securities dealers or agents in Texas without being registered or acting pursuant to an exemption from registration in Texas; (iii) from offering securities through an offer that contains statements that are materially misleading or otherwise likely to deceive the public; and (iv) from engaging in fraud in connection with the offer for sale of any security in Texas.

**B. *Maryland State Securities Division***

[24] On April 8, 2008, the Securities Commissioner of the State of Maryland issued a cease and desist and show cause order against Gittens, Chhean, Rodney, and an individual identified as Rupert Clement Rodney (the "Maryland Respondents").

[25] The Maryland State Securities Division ("MSSD") alleged four counts against the Maryland Respondents: (i) offer and sale of unregistered securities, (ii) fraud in connection with the offer or sale of securities, (iii) fraud in investment advisory activities, and (iv) acting as a broker-dealer and/or agent without being registered under Maryland's securities legislation.

[26] Accordingly, the Maryland Respondents were ordered by the MSSD to immediately cease and desist from offering and selling securities and from engaging in investment advisory activities. They were each ordered to show cause why they should not be barred permanently and why a monetary penalty should not be entered against them for each violation.

[27] The Order relied on a statement of facts, including the following:

- a. In March 2008, an investigator for the MSSD discovered the Rodney website on the internet. The website offered a number of different investment vehicles offering above-market rates of interest, both compounded and non-compounded, that varied, depending on the amount invested, from 14.25% per year on an investment of \$10,000 to 24% per year on \$1,000,000.

- b. On March 12, 2008, the investigator sent an inquiry to the email address alexander.gittens@rodneyinternational.com. He received a reply from someone who identified himself as “Alexander M. Gittens, B.Comm., MBA, Senior Investment Officer, Rodney International.” Attached to the reply email were several documents, entitled “Confidential Project Memorandum & Investment Agreement” (the “Memorandum”), “Investment Application”, “Simple Investing Checklist” and “Now What Do I Do?” (collectively, the “Investor Package”).
- c. The Memorandum described the investment as a “private offering” of “promissory notes” and stated the notes are not securities. It also stated that the investor would be restricted from selling the notes “for an indefinite period.” The notes were stated as having terms ranging from 6 to 24 months.
- d. The Memorandum gave the same two mailing addresses for Rodney that were identified by the TSSB, one in Windsor, Ontario and one in Detroit, Michigan.
- e. Another of the documents, entitled, “Now What Do I Do?”, included information about a “finder’s fee” for investors who refer new investors to Rodney.
- f. When the investigator asked, by email, how to invest by way of wire transfer, he received an email reply from “Gittens” giving information about a bank account.
- g. None of Gittens, Chhean and Rupert Clement Rodney is registered in Maryland as a broker-dealer, broker-dealer agent, investment adviser or investment adviser representative or issuer agent. Rodney is not registered in Maryland as a broker-dealer or investment adviser, nor is it a registered issuer.
- h. Neither Rodney nor anyone associated with it provided potential investors with disclosures regarding the company, its officers, the specific nature of the investments, the source of profits or the risks of investing in it.

**C. *Pennsylvania Securities Commission***

[28] On April 15, 2008, the Pennsylvania Securities Commission (“PSC”) issued a summary cease and desist order against Rodney and Rodney International (Canada) (“Rodney Canada”). Rodney was identified as having the same mailing address in Detroit, Michigan as in the TSSB and MSSD orders. Rodney Canada was identified as having the same mailing address in Windsor, Ontario as in the TSSB and MSSD orders.

[29] Based on a preliminary investigation by its staff, the PSC determined that evidence exists to support the following findings and conclusions:

- a. In or about March 2008, Rodney and Rodney Canada posted an ad on an internet message board stating “You Can Get 14.25% Rate on Low \$10,000 Secured Investment”.
- b. In or about March 2008, at least one Pennsylvania resident responded to the ad by sending an email requesting more information. In reply, a representative of Rodney and Rodney Canada emailed certain offering materials which stated:
  - i. The minimum investment is \$10,000 and the maximum is \$2,500,000.
  - ii. The investment funds will be used to invest in real estate.
  - iii. The investment period is at least six months for investments of \$100,000 or more, and at least twelve months for investments under \$100,000.
  - iv. The interest rate ranges from 14.25% annually on an investment of \$10,000 to \$24,999.9 to 24% annually on an investment of \$1,000,000 or more; and
  - v. Investments are “tripled [sic] covered” by the value of the real estate holdings, the value of the Ulysses Project and the assets of Rodney and Rodney Canada.

[30] The PSC concluded that:

- a. The ad does not contain required disclosures.
- b. The investment is a “security” as defined under Pennsylvania securities legislation, but is not registered in accordance with Pennsylvania securities legislation, is not exempt from registration and is not a federally covered security.

[31] Accordingly, the PSC issued a cease and desist order against Rodney and Rodney Canada “and every successor, affiliate, control person, agent, servant, and employee of each of them, and every entity owned, operated, or indirectly or directly controlled or hereinafter organized by or on behalf of them.”

**D. *The Commission’s Investigation***

[32] Shahviri testified that the TSSB sent Staff hard copies of the four documents included in the Investor Package. The documents were included in Staff’s Document Brief, and Shahviri pointed out the relevant excerpts, which support the findings of the U.S. securities regulators and the findings Staff asks us to make in this proceeding.

[33] Further, Staff filed screen shots from various pages of Rodney’s website, which was linked to Craigslist in Austin, Lubbock and El Paso, Texas. The screen shots support



the findings of the TSSB and the findings Staff asks us to make in this proceeding. Most significantly, the website:

- a. describes Rodney as “a portfolio based company that makes secured equity loans to real estate professionals” and functions “as a private, small-cap version of a Real Estate Investment Trust (REIT)”;
- b. offers a 14.25 to 24 percent annual rate of return on a “secured investment”, depending on the amount invested;
- c. invites prospective investors to contact “Alexander M. Gittens”, who is identified as Senior Investment Officer, for more information;
- d. gives a phone number and email address for Gittens; and
- e. explains that an investment can be made by returning the documents in the Investor Package “with your Bank Draft or Certified Check to our US or Canadian office”.

[34] Shahviri testified that the phone number given on Rodney’s website was the number he and Staff counsel called on September 12, 2008, and which was answered by someone who identified himself as Alexander Gittens.

[35] Finally, Shahviri testified that Staff identified a \$24,000 deposit to Rodney’s CIBC account in LaSalle, Ontario from a U.S. investor. There were two subsequent withdrawals from this account in the amounts of \$21,000 to Chhean, who is described as Rodney’s VP of Operations, and \$3,000 made payable to cash.

## **V. FINDINGS**

[36] Staff’s case relies largely on hearsay evidence, namely the decisions of the TSSB, MSSD and PSC. However, subsection 15(1) of the SPPA allows administrative tribunals, including the Commission, to admit relevant evidence, whether or not it is admissible as evidence in court. We admitted the hearsay evidence from the TSSB, MSSD and PSC in this case based on the undisputed evidence of Shahviri and the submissions of counsel for Staff.

[37] We make the following findings of fact.

[38] Rodney is a sole proprietorship registered under the *Business Names Act*, R.S.O. 1990, c. B.17, as amended. Its registered mailing and business address are in Windsor, Ontario. Rodney has never been registered under the Act, is not and has never been a reporting issuer in Ontario, and has never filed a prospectus with the Commission.

[39] We accept that Gittens has never been registered under the Act.

[40] Though Chhean is registered as the sole proprietor of Rodney and identified as Rodney's VP of Operations on an investor cheque, we accept that in fact, Rodney is Gittens' business, for the following reasons:

- a. The website for Rodney lists Gittens as Senior Investment Officer and provides a phone number and email link for him.
- b. TSSB and MSSD investigators who sent undercover emails to Rodney received email replies from a person who identified himself as Gittens.
- c. The Memorandum Gittens emailed an undercover investigator in March 2008 identifies Gittens as the Project Manager for the Ulysses Project.
- d. TSSB investigators, using the telephone number listed on the Rodney website, contacted a person who identified himself as Gittens. On September 12, 2008, Staff contacted Gittens by calling the same telephone number.

[41] Further, we are satisfied that these events have a substantial connection to Ontario and that Rodney and Gittens engaged in acts in furtherance of trades in Ontario, and therefore, that the Commission has jurisdiction to issue the Order requested by Staff, for the following reasons:

- a. A domain registration search for Rodney gives a Toronto address.
- b. According to the Business Names Report issued by the Ministry of Consumer and Business Services, Rodney's registered mailing and business address is in Windsor, Ontario. Gittens gave the same Windsor, Ontario address for Rodney in email responses to the TSSB and MSSD undercover investigators. The address given appears to be a UPS mailbox.
- c. In addition to the mailing address associated with Rodney, Gittens is associated with two other Windsor, Ontario addresses in the TSSB order. One of these addresses is listed in the Corporation Profile Report issued by the Ministry of Consumer and Business Services as the registered mailing and business address for Michael Gittens Financial Inc. ("MGFI"), of which Gittens is President. That same address was also identified as Gittens' address in the June 12, 2007 information charging him with 53 offences in connection with the sale or attempted sale of counterfeit watches. It was on August 25, 2008, when he attended at the Windsor, Ontario court house, that Gittens was served with the Notice of Hearing, Statement of Allegations and Temporary Order dated August 5, 2008.
- d. We are satisfied, considering all the evidence, that Gittens resides in Ontario.
- e. The Rodney website, on its "How to Invest" page, tells investors that once "your Account Officer" sends the details of the plan, "You simply sign

and return the documents with your Bank Draft or Certified Check to our US or Canadian office.”

- f. In response to undercover enquiries by a TSSB investigator, Gittens instructed the putative investor to wire transfer the money to a branch of the CIBC in LaSalle, Ontario. Speaking to another TSSB investigator by telephone, Gittens identified the CIBC as the lender for many of the loans involved.
- g. A \$24,000 cheque from a U.S. investor was deposited to Rodney’s Canadian bank account, and the funds were later paid out in two cheques, one made payable to Chhean and the other to cash.
- h. The documents that were emailed to prospective investors give mailing addresses for Rodney in Windsor, Ontario and Detroit, Michigan.
- i. The Memorandum and Gittens’ email replies to undercover TSSB and MSSD investigators represented that the Ulysses Project is invested in real estate in the Greater Toronto Area.

[42] We accept that the investments offered by Rodney are “securities” as defined in subsection 1(1) of the Act.

[43] We find that by advertising an investment product, soliciting investors and accepting and depositing into the Rodney account at least one cheque from an investor, Gittens and Rodney engaged in an “act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of” a “trade” as that term is defined in subsection 1(1) of the Act.

[44] In addition, we note that Rodney’s website and the documents included in the Investor Package promised unrealistically high returns, and offered referral fees. Further, we are advised by Staff counsel that there is no evidence of any actual investment activity in Toronto, as advertised.

[45] As neither Gittens nor Rodney is registered with the Commission, we find that they breached subsection 25(1) of the Act in that they traded in securities without being registered, no exemption being available.

[46] Further, we find that Gittens and Rodney breached subsection 53(1) of the Act by distributing securities without a preliminary prospectus and a prospectus having been filed and receipts having been issued by the Commission.

## **VI. CONCLUSION**

[47] For the reasons given above, we find that the Respondents Gittens and Rodney breached subsections 25(1) and 53(1) of the Act, and acted contrary to the public interest.

[48] Within ten days of the release of this decision, the parties shall contact the Office of the Secretary to schedule a sanctions hearing, failing which, a date for a sanctions hearing will be set by the Office of the Secretary.

**DATED** at Toronto this 19<sup>th</sup> day of November, 2008.

*“Wendell S. Wigle”*

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Wendell S. Wigle, Q.C.

*“Suresh Thakrar”*

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Suresh Thakrar