



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- AND -

**IN THE MATTER OF ERNEST ANDERSON,
GOLDEN GATE FUNDS LP, BERKSHIRE CAPITAL LIMITED,
GP BERKSHIRE CAPITAL LIMITED AND
PANAMA OPPORTUNITY FUND**

HEARING HELD PURSUANT TO SECTIONS 127 AND 127.1 OF THE ACT

**SETTLEMENT HEARING RE: ERNEST ANDERSON AND
GOLDEN GATE FUNDS LP**

HEARING: Friday, October 2, 2009

PANEL: Patrick J. LeSage, Q.C - Commissioner (Chair of the Panel)

APPEARANCES: Emily Cole - for Staff of the Ontario Securities Commission
Stephanie Collins

Ernest Anderson - self-represented

Golden Gate Funds LP - did not appear

ORAL RULING AND REASONS

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

Chair:

[1] This was a hearing under sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the “Act”) for the Ontario Securities Commission (the “Commission”) to consider whether it is in the public interest to approve the proposed Settlement Agreement between Staff of the Commission (“Staff”) and the respondents Ernest Anderson and Golden Gate Funds LP (“Golden Gate Funds”).

[2] The exhibits that have been filed are the Settlement Agreement, the Limited Partnership report regarding Golden Gate Funds, the bankruptcy certificate evidencing the fact that Golden Gate Funds is in bankruptcy, and Exhibit 4 - a letter of solicitor Chambers who advised that he is counsel for the trustee in bankruptcy and has been in communication with Staff, but has, out of no sense of disrespect, decided not to attend today, notwithstanding that they are part of this Agreement.

[3] The Agreement discloses that Mr. Anderson is an individual who resides in Ontario. He was the owner and signatory and/or an officer and director of the various Golden Gate entities described below from December 31st, 2003, until at least October the 1st, 2008, when GP Golden Gate Limited, the general partner was assigned into bankruptcy. On or about February 2009, Mr. Anderson became the founding chairman and managing director of the Berkshire entities. Anderson has never been registered in accordance with Ontario securities law.

[4] Golden Gate Funds is a limited partnership which was registered with the Ontario Ministry of Consumer and Business Services in December of 2003. GP Golden Gate Limited was the general partner and Anderson is the signatory.

[5] The stated general nature of the business of Golden Gate Funds was investments. Golden Gate Funds has never been registered in accordance with Ontario securities law and it has never been a reporting issuer in Ontario, nor has it ever filed a preliminary or final prospectus with the Commission, nor have receipts been issued for them by the director. Berkshire Capital is a company incorporated in the Republic of Panama.

[6] The illegal distribution and unregistered trades of Golden Gate Funds securities are set out in paragraph 16 and following of the Agreement. Golden Gate Funds was a fund that purported to invest in cash, cash equivalents, liquid investment, residential and commercial mortgages and real property assets. They offered for sale to investors units of Golden Gate Funds for \$100 each with a guaranteed annual rate of return of eight percent and 100 percent protection of principal. The minimum investment required was \$10,000. There were no restrictions on the maximum. Golden Gate Funds offered the opportunity to share 50 percent of the company's net profit, no fees to invest or withdraw funds, no minimum investment period and low risk and volatility.

[7] Between September of 2005 and May of 2007, approximately \$8,169,687 and some cents of units were sold in Golden Gate Funds. They were sold to 155 Ontario investors. They were sold directly by unregistered sales people who were employees of Golden Gate Funds or a related company, indirectly by at least one unregistered sales person at an unregistered entity and approximately three and a half million dollars worth of units indirectly by a dealer/registrant.

[8] In August of 2005, May of 2006, and October of 2007, Golden Gate Funds filed NI 45-106 forms with the Commission and claimed the accredited investor exemption from prospectus and registration requirements in paragraph 2.3 of the National Instrument.

[9] Several of the investors who invested directly through unregistered sales persons were not accredited investors at the time they purchased their units. Anderson and Golden Gate Funds traded in approximately \$4,650,000 worth of Golden Gate Funds securities in breach of the prospectus and registration requirements of Ontario securities laws. Contrary to the GP Golden Gate Limited Partnership Agreement, investor's funds were not used to purchase an investment portfolio of mortgages. Investor money was transferred from Golden Gate Funds to the bank accounts of other related companies and used to pay operating costs for Golden Gate Funds and other related companies used to pay monthly interest payments to other investors and used to re-pay investors from a previous investment scheme operated by Anderson.

[10] Although Golden Gate Fund's stated business was investments, it has been holding itself out as having been engaged in the business of trading securities in Ontario, as above described. Accordingly, Golden Gate Funds has been acting as a market intermediary and is required to be registered in accordance with Ontario securities laws. Clearly, there have been repeated, significant, costly violations of the Act by Anderson and the funds referred to.

[11] It has had a significant effect on the investors whose total investment was over \$8 million, the proportion in which Anderson and Golden Gate Funds were directly involved was about \$4.6 million. These are people who, I don't think it is unfair to say, at least in my view, were preyed upon by Mr. Anderson and Golden Gate Funds. I say, to Mr. Anderson's credit, that he agreed to a resolution of this matter and that is reflected in the terms of Agreement.

[12] The terms of settlement which I've indicated I'm prepared to impose and order are, that pursuant to sections 127(1) and 127.1 of the Act, the settlement is approved. Trading in any securities by or for Mr. Anderson and Golden Gate Funds shall cease permanently; acquisition of any securities by Mr. Anderson and Golden Gate Funds LP is prohibited permanently; and any exemptions contained in Ontario securities law do not and will not apply to Mr. Anderson and Golden Gate Funds permanently.

[13] Mr. Anderson and Golden Gate Funds are reprimanded. Golden Gate Funds, now in receivership and bankruptcy, is not present, but Mr. Anderson is. Mr. Anderson, all I can say is that what you have done is a significant violation of the rules and regulations of the markets of Ontario and of this country. You have caused many people to lose a lot of the money they invested. I hope by this prohibition and imposed sanctions you understand that you will never be in a position to engage in this type of misconduct again.

[14] Mr. Anderson will resign any position that he holds as a director or officer of an issuer. You are prohibited, Mr. Anderson, from becoming or acting as a director or officer of any issuer. In addition, and as agreed, Anderson and Golden Gate Funds shall each pay an administrative penalty of \$126,795.00 to be allocated under section 3.4(2) of the Act to or for the benefit of third parties.

[15] I queried Staff as to how the somewhat unusual amount of the administrative penalty was reached. It was explained that it followed, more or less, a guide or a ratio set out in *Limelight (Re Limelight Entertainment Inc. (2008), 31 O.S.C.B. 12030)*.

[16] In addition, Anderson and Golden Gate Funds shall jointly disgorge to the Commission the sum of \$4,644,258.10 to be allocated under section 3.4(2) of the Act to or for the benefit of third parties. That number is a little easier to understand because it relates directly to that amount that was handled and sold by Anderson and Golden Gate Funds.

[17] In addition, Anderson and Golden Gate Funds LP shall jointly pay costs of the investigation of this matter in the amount of \$20,000.

[18] That is the order which the Commission imposes.

Approved by the Chair of the Panel on November 2, 2009.

“Patrick J. LeSage”
Patrick J. LeSage, Q.C.