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, 19e 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
AL-TAR ENERGY CORP., ALBERTA ENERGY CORP.,
DRAGO GOLD CORP., DAVID C. CAMPBELL, ABEL DA SILVA,
ERIC F. O'BRIEN AND JULIAN M. SYLVESTER

REASONS AND DECISION

Hearing:	April 20, 21, 22, 23 and 27, 2009	
Decision:	June 11, 2010	
Panel:	Suresh Thakrar	- Commissioner and Chair of the Panel
	Carol S. Perry	- Commissioner
Counsel:	Sean Horgan	- For the Ontario Securities Commission
	Melanie Adams	

No one appeared for any of the Respondents.

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REASONS AND DECISION

1. OVERVIEW

A. Background

[1] This was a hearing before the Ontario Securities Commission (the "Commission") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether Al-tar Energy Corp. ("Al-tar"), Alberta Energy Corp. ("Alberta Energy"), Drago Gold Corp. ("Drago"), David C. Campbell ("Campbell"), Abel Da Silva ("Da Silva"), Eric F. O'Brien ("O'Brien") and Julian M. Sylvester ("Sylvester") (collectively, the "Respondents") breached the Act and acted contrary to the public interest.

[2] A Statement of Allegations was filed by Staff of the Commission ("Staff") on February 14, 2008 and a Notice of Hearing was issued by the Commission on the same day. The Statement of Allegations relates to conduct which took place in 2006 and 2007. Specifically, with respect to Al-tar, Alberta Energy and Drago (the "Corporate Respondents"), the alleged conduct can be broken down into the following timeframes:

(a) from April 2006, to early 2007, Al-tar sold shares to the public that were not previously issued;

(b) from November 2006 until April 2007, Alberta Energy sold shares to the public that were not previously issued; and

(c) from May 2007 until September 2007, Drago sold shares to members of the public that were not previously issued.

[3] The Statement of Allegations also addresses the conduct of Campbell, Da Silva, O'Brien and Sylvester (the "Individual Respondents") and their actions in relation to certain of the Corporate Respondents.

B. History of the Proceeding

[4] The first temporary cease trade order in this matter was issued on July 3, 2007, and was further extended on July 17, 2007, September 11, 2007, December 18, 2007, March 19, 2008 and September 30, 2008. This first temporary order was originally issued against Al-tar, Alberta Energy, O'Brien and Sylvester and eight other individuals who did not end up being named as respondents in this matter. A second temporary cease trade order was also issued on March 19, 2008 and extended on September 30, 2008 to include Drago, Campbell, and Da Silva. On September 30, 2008, both temporary cease trade orders were extended until the conclusion of this proceeding.

[5] The Commission also issued four directions, dated November 29, 2007, to HSBC Bank Canada ("HSBC") and Canadian Imperial Bank of Commerce ("CIBC") freezing

accounts of two companies controlled by Campbell, Zap Group Inc. ("Zap") and 2108709 Ontario Inc. ("2108709") (which are not named as respondents in this matter) and two accounts controlled by Da Silva. The four directions were continued by further order of the Ontario Superior Court of Justice.

[6] With respect to the accounts controlled by Da Silva, a total of approximately $155,000 is frozen and remains subject to the directions until further notice by the Ontario Superior Court.

[7] With respect to the two accounts controlled by Campbell, a total of approximately $35,000 is frozen and remains subject to the directions until further notice by the Ontario Superior Court.

[8] Campbell attended before the Ontario Superior Court of Justice to seek the release of the funds in the frozen accounts, and on December 6, 2007, the Court refused to allow Campbell to speak to the matter until he attended the Commission to be examined. Four days later, Campbell attended before the Commission to be examined by Staff as required by the Ontario Superior Court.

[9] On April 20, 21, 22, 23 and 27, 2009 we heard evidence on the merits in this matter and on April 27, 2009 we also heard closing submissions from Staff. None of the Respondents was present or represented by legal counsel at the hearing.

[10] We also received written submissions from Staff on May 22, 2009. None of the Respondents provided any written submissions.

[11] The following are our reasons and decision on the merits in this matter.

C. The Respondents

i. The Individual Respondents

O'Brien

[12] O'Brien is the sole director, President and CEO of Al-tar. O'Brien is not registered in any capacity with the Commission.

Campbell

[13] Campbell was employed by and/or acted as an agent for Al-tar, Alberta Energy and Drago, and acted as a salesperson for the shares of Al-tar and Alberta Energy. Campbell is not registered in any capacity with the Commission.

[14] Staff alleges that when acting as a salesperson, Campbell used the name Mark Brown ("Brown").

[15] During the period of time when Campbell was participating in the Al-tar, Alberta Energy and Drago operations, Campbell was also subject to a temporary cease trade order issued on April 13, 2006 (*Re Limelight* (2006), 29 O.S.C.B. 3362 (the "*Limelight Temporary Order*")). The *Limelight Temporary Order* was extended and in force against Campbell until the conclusion of that matter in 2008. This order was in force at the material time when the conduct in the present matter took place.

[16] Currently, Campbell is subject to a Commission order restricting his conduct in the Ontario capital markets. Specifically, on December 10, 2008, the Commission issued its Reasons and Decision on sanctions in the matter of *Re Limelight* (2008), 31 O.S.C.B. 12030 ("*Limelight Sanctions*"). Campbell was ordered, *inter alia*, to cease trading permanently, with the exception that he may trade for the account of his registered retirement savings plans (as defined in the *Tax Act*) in which he and/or his spouse have sole legal and beneficial ownership, subject to certain conditions.

Da Silva

[17] Da Silva was employed by and/or acted as an agent for Al-tar and acted as a salesperson for Al-tar shares. Da Silva is not registered in any capacity with the Commission.

[18] Staff alleges that when acting as a salesperson, Da Silva used the name Bill Daniels ("Daniels").

[19] Da Silva is also subject to a Commission order restricting his conduct in the Ontario capital markets. Specifically, on May 10, 2006, the Commission issued its Reasons and Decision on sanctions in the matter of *Re Allen* (2006), 29 O.S.C.B. 3944 ("*Allen Sanctions*"). Da Silva was ordered, *inter alia*, to cease trading for a period of seven years from the date of the order. This order was in force at the material time when the conduct in the present matter took place.

Sylvester

[20] Sylvester is the sole director of Alberta Energy and the sole director of Drago. Sylvester is not registered in any capacity with the Commission.

ii. The Corporate Respondents

Al-tar

[21] Al-tar is an Ontario corporation incorporated on April 21, 2006. Al-tar is not registered in any capacity with the Commission.

Alberta Energy

[22] Alberta Energy is an Ontario corporation incorporated on November 7, 2006. Alberta Energy is not registered in any capacity with the Commission.

Drago

[23] Drago is an Ontario corporation incorporated on May 17, 2007. Drago is not registered in any capacity with the Commission.

D. The Allegations

[24] Staff alleges that:

(a) the Respondents traded in securities of Al-tar, Alberta Energy and/or Drago without being registered to trade in securities and in circumstances where no exemptions were available to them contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(b) Da Silva's trading in shares of Al-tar was a breach of the cease trade order issued by the Commission against him on May 10, 2006;

(c) Campbell's trading in shares of Al-tar, Alberta Energy and Drago was a breach of the cease trade order issued by the Commission against him on April 13, 2006, which was extended by the Commission and remained in force until December 2008 at which time a permanent cease trade order was issued against Campbell;

(d) the Respondents made:

(i) undertakings to potential investors regarding the future value or price of Al-tar, Alberta Energy and Drago shares; and

(ii) representations to potential investors regarding Al-tar, Alberta Energy and Drago shares being listed on a stock exchange,

with the intention of effecting trades in those securities contrary to subsections 38(2) and (3) of the Act and contrary to the public interest;

(e) the Respondents distributed securities of Al-tar, Alberta Energy, and Drago when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued by the director to qualify the sale of any Al-tar, Alberta Energy, or Drago securities contrary to subsection 53(1) of the Act and contrary to the public interest;

(f) the Respondents have, directly or indirectly, engaged or participated in acts, practices or a course of conduct relating to the securities of Al-tar, Alberta Energy and/or Drago that they knew or reasonably ought to have known would perpetrate a fraud on potential investors in Ontario and in other jurisdictions contrary to section 126.1 of the Act and contrary to the public interest. Staff further alleges that the Respondents' conduct of actively misleading, obfuscating and deceiving Staff is an attack on the Commission itself, its process and ability to regulate the capital markets. According to Staff, this confirms the fraudulent conduct that the Respondents engaged in and quashes any legitimacy in the conduct of the Respondents' operations;

(g) O'Brien, as the sole director of Al-tar, authorized permitted or acquiesced in conduct that constitutes violations of sections 25, 38, 53 and 126.1 of the Act, as set out above, by Al-tar and its representatives and accordingly, failed to comply with Ontario securities law pursuant to section 129.2 of the Act; and

(h) Sylvester, as the sole director of Alberta Energy and Drago, authorized, permitted or acquiesced in conduct that constitutes violations of sections 25, 38, 53 and 126.1 of the Act, as set out above, by Alberta Energy, Drago and their representatives, and accordingly failed to comply with Ontario securities law pursuant to section 129.2 of the Act.

2. PRELIMINARY ISSUES

A. The Failure of the Respondents to Appear at the Hearing

[25] As stated above, none of the Respondents was represented or appeared at the hearing. Subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA") provides that a tribunal may proceed in the absence of a party when that party has been given adequate notice:

> 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.

[26] Staff provided us with four Affidavits of Service, dated April 20, 2009, to establish that all the Respondents were provided with notice of the merits hearing. In addition, Staff's investigator, Wayne Vanderlaan ("Vanderlaan") testified as to how each of the Respondents was served.

[27] Staff took all reasonable steps to provide the Respondents with a package of documents including: a letter from Staff informing the Respondents of the merits hearing date set during a pre-hearing conference, the Notice of Hearing, the Statement of Allegations, a certified copy of the confidential pre-hearing order of the Commission

setting the merits hearing date, as well as cease trade orders that were initially issued by the Commission in 2007 and then continued through 2008.

[28] In addition, we were provided with two Affidavits of Service dated April 1, 2009 from process servers which demonstrate that O'Brien and Da Silva were personally served, and we were provided with two Affidavits of Attempted Service dated April 1, 2009, that the process servers attempted to serve both Campbell and Sylvester at their last known address.

[29] The affidavits and testimony of Vanderlaan establish that:

(a) Campbell was served personally by Staff with notice of the merits hearing;

(b) Staff provided notice of the merits hearing to Da Silva by leaving the package of documents with Da Silva's father, who lives at the same residence as Da Silva, who indicated to Staff that he would provide the package of documents to Da Silva. In addition, Da Silva was personally served by the process server;

(c) Sylvester was served personally by Staff with notice of the merits hearing;

(d) O'Brien was served personally by Staff with notice of the merits hearing;

(e) Al-tar was provided notice of the merits hearing by personally serving O'Brien who is the sole director of Al-tar; and

(f) Alberta Energy and Drago were provided notice of the merits hearing by personally serving Sylvester who is the sole director of both Alberta Energy and Drago.

[30] In addition, we note that leading up to the hearing on the merits, the Respondents were uncooperative with Staff. They were reluctant to attend, refused to attend or rescheduled examinations on several occasions with Staff, and they did not attend many previous appearances in this matter.

[31] In the circumstances, we are satisfied that Staff took all reasonable steps available to provide adequate notice of this proceeding to all of the Respondents and that we are entitled to proceed in their absence in accordance with subsection 7(1) of the SPPA.

B. The Appropriate Standard of Proof

[32] The standard of proof applicable in Commission proceedings is proof on a balance of probabilities. Staff referred us to *F.H. v. McDougall*, [2008] 3 S.C.R. 41, a recent Supreme Court of Canada decision, which states at paragraph 49 that:

> …in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize

> the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[33] At paragraph 46, it is further stated that:

> …evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.

[34] The standard of proof in administrative proceedings is the civil standard of a balance of probabilities. In this matter, Staff makes serious allegations against the Respondents. Accordingly, we must be satisfied that there is sufficient clear, convincing and cogent evidence to support our findings. We are satisfied that the events described in these reasons are more likely than not to have occurred.

C. The Use of Hearsay

[35] Since none of the Respondents appeared at the hearing, some of the evidence relating to statements made by the Respondents was hearsay. Specifically, Staff relied on evidence from Staff investigators and testimony that some of the Respondents gave during compelled interviews with Staff.

[36] Subsection 15(1) of the SPPA states:

> Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[37] In *The Law of Evidence in Canada*, it is stated that:

> In proceedings before most administrative tribunals and labour arbitration boards, hearsay evidence is freely admissible and its weight is a matter for the tribunal or board to decide, unless its receipt would amount to a clear denial of natural justice. So long as such hearsay evidence is relevant it can serve as the basis for the decision, whether or not it is supported by other evidence which would be admissible in a court of law.
>
> (John Sopinka, Sidney N. Lederman & Alan W. Bryant, *The Law of Evidence in Canada*, 2d ed. (Markham, Ont.: LexisNexis Butterworths, 1999) at p. 308)

[38] Although hearsay evidence is admissible under the SPPA, the weight to be accorded to such evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability (*Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115). In the circumstances, we admitted the hearsay evidence tendered by Staff, subject to our consideration of the weight to be given to that evidence.

[39] With respect to the compelled testimony of the Individual Respondents (O'Brien, Da Silva, Campbell and Sylvester) we note that it was given under oath during the investigation of this specific matter pursuant to section 13 of the Act for the purposes of use in this specific proceeding. We also note that counsel for some of the Respondents was present at some of the examinations during Staff's investigation (specifically, Da Silva and O'Brien had counsel present). In addition, we had in evidence the compelled testimony of an individual, Robert Gomes ("Gomes"), who created the Al-tar website on Campbell and Da Silva's instructions and the Alberta Energy website on Campbell's instructions. Gomes was not a respondent or witness in this matter, but we note that this individual also had counsel present during his compelled interview.

[40] Staff is entitled to use the information and materials of its investigation (i.e. compelled testimony gathered pursuant to sections 11 and 13 of the Act) in this merits hearing which is directly related to the investigation.

[41] Compelled testimony in a merits hearing is helpful in situations where respondents have been uncooperative and have obstructed the investigation and hearing. This is the case in the present matter. During the examinations, the Respondents misled Staff, denied knowledge of many events and tried to avoid and delay this hearing on the merits.

[42] Further, none of the Respondents appeared before us, were represented or were present to object to the use of the hearsay or compelled testimony, to cross-examine on it or to introduce contradictory evidence of their own. As a result, the Respondents have waived their rights to do so. As stated in *Violette v. New Brunswick Dental Society*, [2004] 267 N.B.R. (2d) 205 (C.A.) at para. 80:

> In conclusion, I am of the view that the appellant's informed decision not to participate in the hearing before the Discipline Committee constitutes abandonment, leading to waiver of possible breaches of the rules of procedural fairness. This conclusion is hardly surprising. He who seeks fairness must act fairly by raising timely objections. This necessarily requires the affected party's participation.

[43] There was documentary evidence introduced by Staff that corroborated or was consistent with the hearsay evidence given by the Staff investigators. This documentary evidence included copies of emails and faxes from certain of the Respondents referring to conversations with investors and copies of legal documents referring to transactions purportedly discussed between certain of the Respondents and investors.

[44] We find that, taken as a whole, the totality of the evidence is corroborative and consistent.

D. Jurisdiction: A Significant Nexus Between the Investment Scheme and Ontario

[45] The majority of the investors involved in this matter resided outside of Ontario. However, we find that the Commission has jurisdiction in this matter as the investment scheme as a whole had a significant nexus to Ontario.

[46] The Supreme Court of Canada addressed this issue in *Gregory & Company Inc. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 ("*Gregory*"). In *Gregory*, the corporate respondent argued that it was not subject to the jurisdiction of the Quebec Securities Commission. Although the respondent had its head office in Montreal, mailed promotional materials and telephoned investors from Montreal, and directed investors to mail payment cheques to Montreal, where it maintained its bank account, the investors resided outside Quebec. The Supreme Court of Canada concluded that the respondent did carry on the business of trading in securities and acting as investment counsel in Quebec:

> The fact that the securities traded by [the] appellant would be for the account of customers outside of the province or that its weekly bulletins would be mailed to clients outside of the province, does not, as decided in the Courts below, support the submission that [the] appellant was not trading in securities or acting as investment counsel, in the province, within the meaning and for the purposes of the Act Respecting Securities.
>
> 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 therein carrying on such a business. . . .
>
> (*Gregory*, *supra* at p. 3 (QL version))

[47] The Commission has applied this principle set out in *Gregory* and has found in other cases that respondents have acted in furtherance of trades even though there was no evidence that the trades involved investors in Ontario.

[48] For example, in *Re Lett* (2004), 27 O.S.C.B. 3215, the Commission found that the respondents had acted in furtherance of trades and that those acts occurred in Ontario, although there was no evidence that the trades involved investors in Ontario:

> The Respondents were all based in the Toronto area, had bank accounts in the Toronto area, carried on business in the Toronto area. Most, if not all, of the documents referred to in the Agreed Statement of Facts and in the six volumes of documents composing the Joint Hearing Brief consist of

> documents that were either sent by the Respondents from the Toronto area or addressed to them in the Toronto area.
>
> (*Re Lett, supra* at para. 66)

[49] In addition, in *Re Allen* (2005), 28 O.S.C.B. 8541 ("*Allen Merits*") the Commission dealt with the issue in the following way:

> In this case, sales of securities of Andromeda were made by the Respondents to investors in Ontario and in Alberta. A substantial portion of the activities surrounding the sales of these securities by the Respondents took place in Ontario. The issuer is located in Welland, Ontario. The Respondent's offices and operations were based in Toronto, Ontario. The promotional materials were mailed from Toronto. The phone calls made by the Respondents were made from their Toronto offices and cheques in payment for the purchase of Andromeda securities were also sent to this location.
>
> The Commission has jurisdiction over a trade in securities, notwithstanding that the purchaser is in a different province, provided that some substantial aspect of the transaction occurred within Ontario. In *Gregory & Co. Inc. v. Quebec Securities Commission*, [1961] S.C.R. 584, at para. 10, the Supreme Court of Canada concluded that the fact that the offices and operations of the vendor were in Montreal was sufficient to give the Quebec Securities Commission jurisdiction over sales to extra-provincial purchasers.
>
> (*Allen Merits*, *supra* at paras. 20 and 21)

[50] Staff also referred us to *R. v. Libman,* [1985] 2 S.C.R. 178 ("*Libman*"). In this case, the Supreme Court of Canada held that the accused could be charged with fraud and conspiracy to commit fraud under the *Criminal Code*, R.S.C. 1985, c. C-46, as amended, though some elements of the offences occurred outside Canada. Libman and his employees allegedly telephoned U.S. residents and attempted to sell them shares in two Costa Rican gold mining companies. Promotional materials were mailed out from Costa Rica or Panama, investors were told to send their money to offices in Costa Rica or Panama, and Libman met with associates in Costa Rica and Panama to receive his share of the proceeds. However, the "boiler room" was located in Toronto and some of the proceeds were wired back to Toronto.

[51] The Supreme Court in *Libman* also noted that an offence can occur in more than one place:

> Although offences are local, the nature of some offences is such that they can properly be described as occurring in more than one place. This is peculiarly the case where a transaction is carried on by mail from one territorial jurisdiction to another, or indeed by telephone from one such

jurisdiction to another. This has been recognized by the common law for centuries.

(*Libman, supra* at para. 53 citing *R. v. W. McKenzie Securities Ltd. et al* (1966), 56 D.L.R. 56 at para. 22)

[52] We conclude that the conduct of the Respondents has significant and substantial connections to Ontario. In coming to this conclusion, we considered the following factors: (i) the issuers and offices were located in Ontario; (ii) promotional materials and telephone calls originated in Toronto; (ii) cheques as payments for investments were sent to Toronto; and (iv) bank accounts for the corporate respondents were located in Toronto. Therefore, we find that the Commission has jurisdiction over the conduct of the Respondents in the present matter.

3. ISSUES

[53] This matter raises the following issues for our consideration:

(a) Did the Respondents trade in securities in breach of subsection 25(1)(a) of the Act?

(b) Did Da Silva and Campbell engage in trades or acts in furtherance of trades that breached the Commission's cease trade orders dated April 13, 2006 and May 10, 2006?

(c) Did the Respondents engage in a distribution without a prospectus in breach of subsection 53(1) of the Act?

(d) Were any registration or prospectus exemptions available to the Respondents?

(e) Did the Respondents breach subsection 38(2) of the Act by making prohibited undertakings regarding the future value or price of securities?

(f) Did the Respondents breach subsection 38(3) of the Act by making prohibited representations regarding the future listing of securities on a stock exchange?

(g) Did the Respondents, directly or indirectly, engage or participate in acts, practices or a course of conduct relating to securities of Al-tar, Alberta Energy and/or Drago that they knew or reasonably ought to have known would perpetrate a fraud in breach of section 126.1 of the Act?

(h) Was O'Brien responsible for the breaches of Al-tar and was Sylvester responsible for the breaches Alberta Energy and Drago, pursuant to section 129.2 of the Act?

(i) Was the Respondents' conduct contrary to the public interest and harmful to the integrity of the Ontario capital markets?

4. EVIDENCE

A. Evidence Presented

[54] Staff submitted to us documentary evidence, a total of 33 exhibits, and called 12 witnesses:

- two Staff investigators: Scott Boyle ("Boyle") and Vanderlaan;
- the manager of Apple Self Storage (the "Apple Self Storage Manager");
- five Al-tar investors: Investor 1, Investor 2, Investor 3, Investor 4, and Investor 5;
- two Alberta Energy investors: Investor 6 and Investor 7; and
- two Drago investors: Investor 8 and Investor 9.

[55] In order to protect the privacy of the Apple Self Storage Manager and the investor witnesses we have anonymized their names and personal information. In addition, to protect the personal information of the Apple Self Storage Manager and the investor witnesses in this matter, we have required that Staff provide a redacted version of the record.

B. Summary of Findings

i. The Investment Scheme

[56] This matter deals with an investment scheme that involved three companies, Al-tar, Alberta Energy and Drago, and four individual respondents O'Brien, Campbell, Da Silva and Sylvester, none of which was registered in any capacity with the Commission.

[57] Staff described the investment scheme at issue to be of a "rolling and temporary" nature. This is a characteristic trait of boiler room type operations. The success of a boiler room to defraud investors is contingent upon a process that typically involves individuals creating companies which purport to be engaged in legitimate businesses. They create schemes that use the current economic/market climate to appeal to investor sentiments. For example, in this case the Respondents created companies purported to be involved in the oil/energy extraction and gold mining industries.

[58] The "rolling and temporary" nature of the scheme typically involves a process comprised of a series of steps: naming and registering a company in a "hot" industry, creating a website to promote the company and its securities, acquiring lists of potential investors, developing a scheme/sales pitch for securities, and creating infrastructure to

support the company (i.e. mailboxes, phone lines, virtual offices, couriers, bank accounts…etc.). The sales pitch used uses high pressure sales tactics and promises high returns, an increased future value and listing on a stock exchange. Press releases containing false and/or misleading information are also issued on an ongoing basis to give progress updates on the company and to create legitimacy to the scheme and entice potential investors to invest or current investors to invest more.

[59] Once the scheme is in place, then comes the receipt and immediate transfer of funds from investors to various accounts controlled by the Respondents or related individuals and entities. At this point, the scheme is abandoned and a new scheme is already up and running with a new company formed (which has a website and support infrastructure…etc.) which solicits investors and involves many of the same players who created the first investment scheme. In addition, we note that names of some investors were obtained from investor lists of other companies such as Limelight and First Global, which were companies that have been subject to Commission proceedings and found to have breached the Act (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("*Limelight Merits*") and *Re First Global Ventures, S.A.* (2007), 20 O.S.C.B. 10473 ("*First Global*")). For example, Investor 1, Investor 5 and Investor 8 were all solicited by Limelight prior to being solicited by certain of the Corporate Respondents in this matter, and Investor 2 had invested in First Global prior to being contacted about Al-tar.

[60] Specifically in this case, we were provided evidence that Al-tar was incorporated in Ontario on April 21, 2006. O'Brien was the sole director. The Al-tar website was accessible to the public as of May 3, 2006. Bank accounts were opened on May 8, 2006 (subsequently closed on November 14, 2006), and August 28, 2006 (subsequently closed on April 30, 2007). Mail boxes, phone services and courier accounts, were set up around June 2006. There was an office set up with furniture, computers, telephone lines and staffed with employees. Al-tar's office was located at 981 Coxwell Avenue in Toronto. However, Al-tar's website and promotional materials listed its address as 530 Adelaide Street West, Suite 6131 in Toronto, which was a mail box, and its corporate profile listed its address at 1047A Gerrard Street East in Toronto. Over the six month period from June to December 2006, at least seven press releases were issued by Al-tar.

[61] Meanwhile, a similar set up of operations, characterized by the "rolling and temporary nature" were established for Alberta Energy (company created on November 7, 2006) and Drago (company created on May 17, 2007).

[62] During the course of soliciting the public to purchase shares in Al-tar, Alberta Energy and Drago, representatives from all three of these companies made statements to the public that the shares in the companies would be going public and that the share price would rise dramatically. Potential investors were referred to the websites of Al-tar, Alberta Energy and Drago, and these websites provided information (such as press releases and other promotional material) that contained fraudulent and/or misleading statements.

[63] We conclude that the investment scheme was comprised of ongoing misconduct by the Respondents. It was a continuous scheme that took place over an 18 month period

from spring of 2006 until fall of 2007. This was not a series of separate acts; the operations of the three Corporate Respondents were related and rolled into one another.

ii. The Role of Aliases Used by the Individual Respondents in the Investment Scheme

[64] The execution of the investment scheme described above was facilitated by the use of aliases by some of the Individual Respondents when communicating with investors and/or potential investors.

[65] Staff submit that they were aware that sales persons for the Corporate Respondents were using the aliases Bill Jakes ("Jakes"), Brown, Daniels, John Andrews ("Andrews") and Pat Jones ("Jones"). Specifically, Staff took the position that Brown was an alias for Campbell and Daniels was an alias for Da Silva.

[66] With respect to Campbell, we find that there was sufficient evidence presented to us at the hearing to establish that Campbell used the alias Brown. The alias Brown was used in dealings with both Al-tar and Alberta Energy. The testimony of the Apple Self Storage Manager confirmed that Campbell assumed the name Brown. Apple Self Storage provided self storage and mailbox rental services, and Al-tar was a client of this company. During the investigation in September 2007, Vanderlaan and Boyle showed the Apple Self Storage Manager 12 photographs, one of which was Campbell and the remaining photographs were unrelated individuals. When the Apple Self Storage Manager viewed the photographs, he immediately identified the picture of Campbell as the individual he knew to be Brown, who picked up the Purolator packages for Al-tar. At the hearing, the Apple Self Storage Manager confirmed that he recognized Brown when answering questions from the Panel and the following is an excerpt of the relevant testimony:

Chair of the Panel:	… just one question. You did recognize Mr. Mark Brown.
Answer:	Um-hum.
Chair of the Panel:	You had no hesitation recognizing him from the twelve pictures that you were shown?
Answer:	No, I didn't have any hesitation about that. His size and his appearance whenever he came in to the site, you know, it's something you wouldn't forget. Not that he had any -- he did anything strange in the site, but it's a face I could not forget.

(Transcript, April 20, 2009 at p. 186 lines 11 to 22)

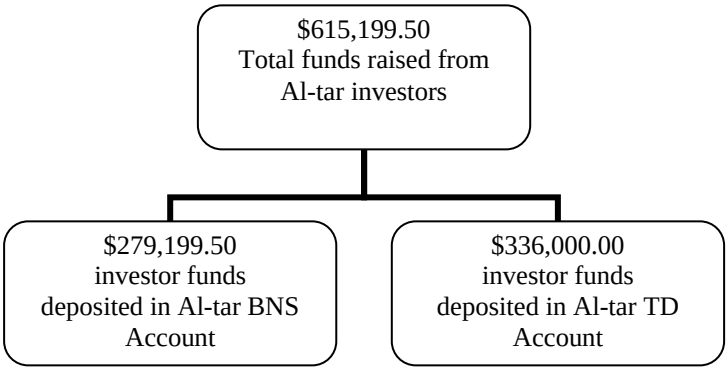
[67] We find that the Apple Self Storage Manager was able to confidently remember and recognize Brown when he was shown a photograph of Campbell. In our view, this confirms that Campbell was using the alias Brown when interacting with others in this matter.

[68] With respect to Da Silva, we find that there was sufficient evidence presented to us at the hearing to establish that Da Silva used the alias Daniels. Vanderlaan testified that several Al-tar investors only dealt with an individual from Al-tar named Daniels. He also provided in evidence phone records that demonstrate that the five Al-tar investors were contacted by phone land lines from two addresses, one of which was 51 Eastpark Blvd. Da Silva admitted in his compelled testimony that 51 Eastpark Blvd. was his home address where he had an office for his company Premium Resource in his basement and that he was the only person who used the office. Based on this evidence, we conclude that Da Silva was using the alias Daniels when phoning these Al-tar investors.

iii. Funds Raised from Investors

[69] The evidence shows that from April 2006 to early 2007, Al-tar sold shares to the public that were not previously issued. Shares of Al-tar were sold to at least 120 individual investors in Ontario and elsewhere across Canada. Specifically, Investor 1 invested twice in Al-tar: the first time for $4,999.50 and the second time for $2,667.00, Investor 2 invested $15,000 in Al-tar, Investor 3 also invested twice in Al-tar: the first time for $4,500 and the second time for $6,000, Investor 4 also invested twice in Al-tar: the first time for $2,250 and the second time for $3,000, and Investor 5 invested $6,000 in Al-tar.

[70] Al-tar investor funds were deposited in Al-tar's bank accounts at TD Canada Trust account (the "Al-tar TD Account") and the Bank of Nova Scotia account (the "Al-tar BNS Account"). Specifically, $279,199.50 from investors was deposited into the Al-tar BNS Account and $336,000 from investors was deposited into the Al-tar TD Account, for a total of $615,199.50.



[71] From November 2006 until April 2007, Alberta Energy shares were sold to two investors in the United Kingdom raising $33,909.53. Specifically, Investor 6 invested $11,316.50 and Investor 7 invested $22,593.03. Funds were deposited in the Alberta Energy bank account at TD Canada Trust.

[72] From May 2007 until September 2007, Drago shares were sold to three investors in Canada raising $9,000. Specifically, Investor 8 invested $3,000, Investor 9 invested $1,500 and a third Drago investor who we were provided evidence about but did not testify at the hearing invested $4,500. Funds were deposited in the Drago bank account at TD Canada Trust.

[73] The evidence shows that during the material time, a total of $658,109.03 was raised from investors from the sale of shares of the three Corporate Respondents.

[74] Investor funds were deposited into various bank accounts, and were immediately transferred out of these bank accounts in the span of a few days to other accounts controlled by some of the Respondents or related individuals and entities as discussed below. We note that when these transfers of funds were made, they were for amounts that were slightly over or below the individual investors' deposited amounts.

iv. Non-respondent Companies that were Linked to the Investment Scheme

[75] While not listed as respondents in this matter, a number of companies were mentioned in the evidence that were linked to the investment scheme. The control/ownership and role of these companies is relevant to understanding the investment scheme and the flow of investor funds. Specifically, these companies received investor funds (with the exception of OSG Capital) and the Individual Respondents are linked to some of these companies as follows:

- **Sterling Services AOS ("Sterling")**: O'Brien was the sole director of Sterling. This company was incorporated on November 24, 2006 and was located at 530 Adelaide St. W., suite 6131 in Toronto. We note that this company had the same address as Al-tar. Sterling received $33,800 from the Al-tar bank accounts.

- **Canadian Oil Riggers Inc. ("Canadian Oil Riggers")**: Campbell was the sole director of Canadian Oil Riggers. This company was incorporated on July 12, 2006 and was located at 1576 Queen St. W., suite 57 in Toronto. Canadian Oil Riggers received $174,320.93 from the Al-tar bank accounts, $33,950 from Alberta Energy and $8,925 from Drago. In total, Canadian Oil Riggers (controlled by Campbell) received $217,195.93 from the whole investment scheme.

- **2108709**: Campbell was also listed as the sole director of 2108709. This company was incorporated on July 7, 2006 and was located at 1576 Queen St. W., suite 57 in Toronto (the same address as Canadian Oil Riggers). 2108709 received $190,000 from Canadian Oil Riggers (of this amount, $27,274.28 is frozen as a result of the Commission's freeze directions).

- **Zap**: Campbell was also the president of Zap and was listed as the shareholder and beneficial owner with 100% ownership. Sylvester was listed as Zap's secretary and treasurer. This company was incorporated on May 8, 2007 in

Nevada and was located at 925 Rathburn Road East in Mississauga. Zap received $57,000 of investor funds which flowed first to Canadian Oil Riggers, then to 2108709 and then subsequently to Zap (of this amount, $7,259.49 is frozen as a result of the Commission's freeze directions). According to Vanderlaan's testimony, Zap had no source of capital other than investor funds. Zap used the funds it received to pay for expenses for the Zap Internet Café, which was run by Campbell and Sylvester.

- **Premium Resource Marketing ("Premium Resource")**: Da Silva was the sole director of Premium Resource. This company was incorporated on November 22, 2005 and was located at 51 East Park Blvd. in Toronto, which is Da Silva's home address. Between June 23, 2006 to November 30, 2006, Premium Resource received $207,030 from the Al-tar bank accounts. According to Da Silva, the funds received were paid as a result of a marketing contract entered into between Al-tar and Premium Resource. We were not provided any evidence regarding this contract during the proceeding.

- **1290310 Ontario Ltd. ("1290310")**: Carlos Da Silva (who is not a respondent in this matter) was the director of 1290310. This company was incorporated on April 15, 1998 and was located at 21 Flerimac Road in Pickering. 1290310 received $7,500 from Al-tar. In addition, 1290310 received $43,259 of investor funds which flowed first to Canadian Oil Riggers, then to 2108709 and then subsequently to 1290310. 1290310 also received a payment of $9,998 directly from Canadian Oil Riggers.

- **1557581 Ontario Inc. ("1557581")**: Carlos Da Silva was also a director of 1557581. This company was incorporated on January 16, 2003 and was located at 63 Invermarge Drive in Toronto. 1557581 received $58,944 of investor funds which flowed first to Canadian Oil Riggers, then to 2108709 and then subsequently to 1557581.

- **OSG Capital Corp (Offshore Solutions Group) ("OSG Capital")**: According to OSG Capital's website, this company "has over ten years of investment industry Knowledge and is dedicated to providing unparalleled investment services and trade execution for their clients". The website also lists OSG Capital's contact address which is a mailbox in the British Virgin Islands, with a phone number in London, England. Staff also mentioned in their submissions that OSG Capital's mailbox location was used by numerous other companies. We note that OSG Capital was not named as a respondent in this matter, however, it did promote Alberta Energy on its website. This company did not receive any funds from investors, however, it was involved with communicating with investors for Al-tar and Alberta Energy. We reviewed the evidence before us to determine who controlled OSG Capital. We find that:

    - OSG Capital's website was created by Gomes and hosted on the same servers as Al-tar and Alberta Energy.

- OSG Capital responded to emails that were sent to Alberta Energy.

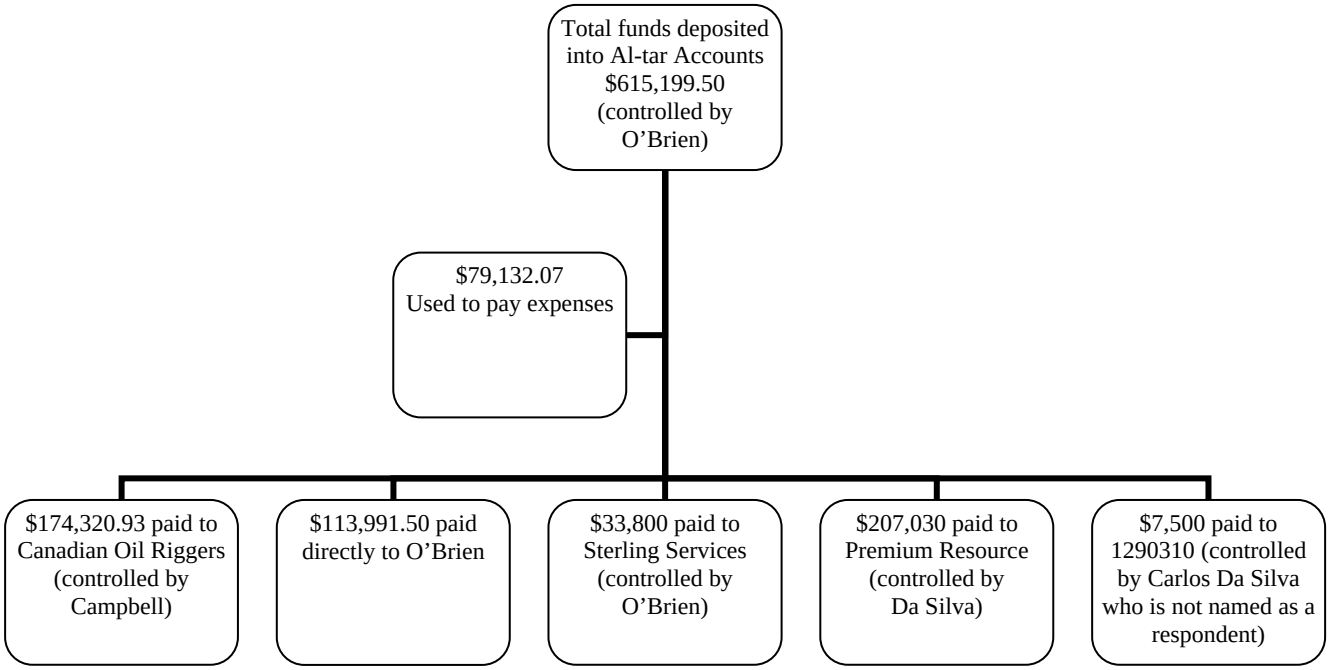
- OSG Capital was also listed on the letterhead of correspondence (such as correspondence providing share certificates) that was sent to some of those investors and/or on emails. The majority of the correspondence emanating from OSG Capital was signed by Brown, an alias used by Campbell. We also note that Brown was involved with Alberta Energy and Al-tar.

- In addition, two letters to Investor 7 from OSG Capital were signed by Sylvester in his capacity as President of OSG Capital.

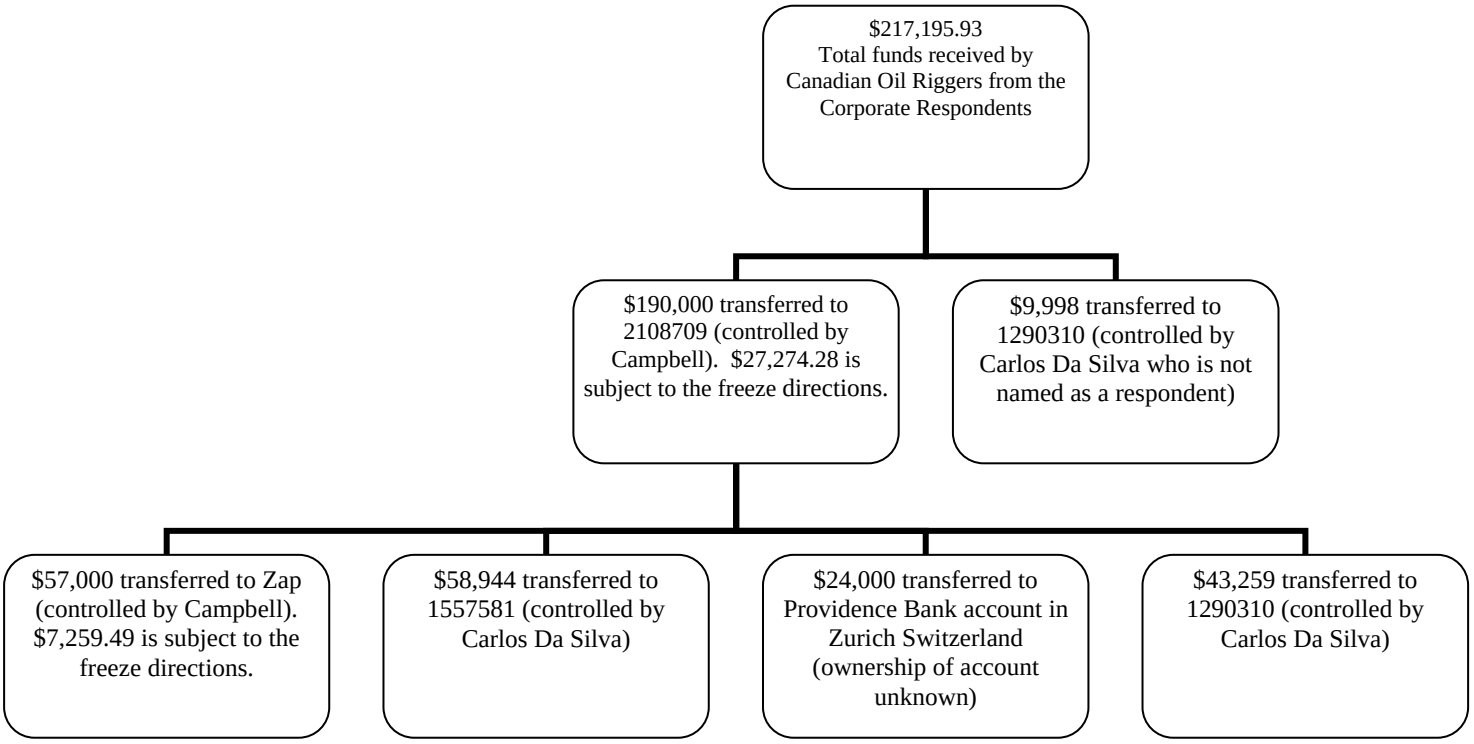
Based on all this information collected, we conclude that OSG Capital was linked to Campbell (using the alias Brown), Sylvester, Alberta Energy and Al-tar.

v. Disbursements of Investors' Funds

[76] Total investor funds raised by Al-tar was $615,199.50. The evidence presented to us shows that these funds were distributed to individuals and related entities as shown in the chart below:



[77] Most of the funds raised by Al-tar were transferred to Canadian Oil Riggers. Similarly, the majority of investor funds collected by Alberta Energy and Drago were also transferred to Canadian Oil Riggers. In total Canadian Oil Riggers received $217,195.93. These funds were subsequently distributed to accounts controlled by some of the Respondents or related individuals and entities as shown in the chart on the next page:



[78] To summarize, the evidence shows that the majority of the total funds of $658,109.03 raised from Al-tar, Alberta Energy and Drago investors was immediately distributed to individuals and other related entities as described below:

- Canadian Oil Riggers, controlled by Campbell, received in total $217,195.93. Most of these funds were subsequently distributed out as follows:
    - Carlos Da Silva and/or companies controlled by him who were not named as respondents received a total $112,201 from Canadian Oil Riggers. We have no evidence as to what these payments were for.
    - A deposit of $24,000 was made to a Swiss bank account. We were not provided with any details regarding who controlled this account.
    - Zap, which was controlled by Campbell, received $57,000.
- O'Brien received a total of $147,791.50 directly and through Sterling.
- Da Silva received a total of $207,030 through Premium Resource.

[79] Staff presented evidence to show that $79,132.07 was used by Al-tar for corporate expenditures. These expenditures were for cash withdrawals, personal expenses (such as purchases at liquor and grocery stores in Ontario and New Brunswick), and expenditures relating to the investments scheme (such as payments for the courier, lease and telephone

bills). The evidence did not show any legitimate expenses relating to any of Al-tar's purported business activities in the oil, gas, exploration or mining industries.

5. ANALYSIS

A. Did the Respondents Trade in Securities in Breach of subsection 25(1)(a) of the Act?

i. The Applicable Law

[80] Subsection 25(1)(a) of the Act prohibits trading in securities without being registered:

> No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
>
> …

Registration

[81] Registration requirements play a key role in Ontario securities law and form one of the cornerstones of the regulatory framework of the Act. They impose requirements of proficiency, good character and ethical standards on those people and companies trading in and advising on securities. As the Commission stated in *Limelight Merits, supra* at para. 135:

> Registration serves as 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.

[82] Further, as stated in *Gregory, supra* at 588:

> 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 therein carrying on such a business. For the attainment of this object, trading in

> securities is defined in s. 14 [now s. 1.1]; registration is provided for in s. 16 [now s. 25] as a requisite to trade in securities…

Trading

[83] For a breach of subsection 25(1)(a), a trade in securities is required. Under subsection 1(1) of the Act, "trade" includes:

> (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
>
> […]
>
> (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[84] In addition to an actual trade, any act in furtherance of a trade that occurs in Ontario constitutes trading in securities under the definition in the Act (*Re Lett*, *supra* at para. 64). Whether an act is in furtherance of a trade is a question of fact, to be determined in each case, based on whether there is a sufficiently proximate connection to the trade. As explained in the case *Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47:

> 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.

[85] The case law has established that the following conduct has been found to have been an act in furtherance of a trade:

- acceptance of investors funds from investors (*Re Lett*, *supra* at para. 49);
- depositing investor cheques for the purchase of shares in a bank account (*Limelight Merits*, *supra* at para. 133);
- providing subscription agreements for signature to investors, conducting information sessions with groups of investors, and accepting money (*Re Momentas Corporation* (2006), 29 O.S.C.B. 7408 at para. 80);

- issuing and signing share certificates and instructing solicitors in connection with the issuance and exchange of shares (*Del Bianco v. Alberta (Securities Commission)*, [2004] A.J. No. 122 (C.A.) at para. 9); or

- setting up websites intended to "excite the reader" about the company's prospects, soliciting potential investors by utilizing the content of the website, and/or using numerous misleading statements, which investors relied on when making their investments. The Commission has found that persons who provide the content and maintain websites that have a "proximate connection" to a trade have engaged in acts in furtherance of a trade (see: *Re First Federal Capital (Canada) Corp.* (2004), 27 O.S.C.B. 1603 and *Re American Technology Exploration Corp.* (1998), L.N.B.C.S.C. 1).

[86] It is also important to note that solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of a trade (*Allen Merits*, *supra* at para. 85).

[87] The primary consideration of the Commission in determining whether a trade has occurred is the effect on investors and potential investors. The Commission will consider the totality of the conduct as well as the setting in which the acts occurred in determining whether there has been a trade (*Re Momentas Corporation*, *supra* at para. 77). This is a contextual approach that examines the totality of the conduct and the setting in which the acts of the Respondents have occurred.

ii. Analysis

[88] The following are our findings regarding breaches of subsection 25(1)(a) of the Act based on the evidence presented at the hearing.

Registration

[89] We find that none of the Respondents in this matter was ever registered with the Commission in any capacity, and as discussed later on, no registration exemptions were available to the Respondents as none of the investors was an accredited investor.

Trading and Acts in Furtherance of Trades

O'Brien

[90] We find that O'Brien's conduct in connection with Al-tar breached subsection 25(1)(a) of the Act.

[91] With respect to Al-tar, O'Brien who was its sole director, engaged in the following conduct:

- He opened the Al-tar bank accounts. Specifically, O'Brien opened the Al-tar BNS Account on May 8, 2006 and was listed as the sole owner and signatory. The Al-tar BNS Account was closed on November 14, 2006. He also opened the Al-tar TD Account on August 28, 2006 and was listed as the sole owner, President and sole signatory on the account. This account was closed on April 30, 2007.

- He admitted in his compelled testimony that he was the only individual that deposited investor cheques into the Al-tar bank accounts.

- He opened the Al-tar mailbox account at Apple Self Storage on June 6, 2006. We note that this was the address listed on Al-tar's website. O'Brien was also authorized to pick up packages for Al-tar from Apple Self Storage. Al-tar's mailbox account was closed on May 25, 2007.

- He opened the Al-tar Purolator courier account in June 2006 and invoices for this account were paid for by cheques signed by him from Al-tar bank accounts.

- He rented an apartment at 981 Coxwell Ave. in September or October 2006, and the office furniture and computers were moved into this apartment. Records provided in evidence show that there were nine phone lines for this address and 46 calls were made to 19 Al-tar investors from this address.

- He contracted for phone and answering services from AnswerPlus Inc. for two telephone numbers, 416-201-5250 and 1-888-568-6669. The 1-888-568-6669 toll free number appeared on the Al-tar website and the 416-201-5250 number appeared on correspondence sent to investors as a contact number.

- Investors received correspondence, share certificates, emails, an Executive Summary, and press releases that were signed or sent by O'Brien in his capacity as President and CEO of Al-tar. This was admitted in O'Brien's compelled testimony: he signed (in his capacity as President and CEO of Al-tar) share certificates, correspondence welcoming investors as Al-tar shareholders, fax cover sheets and emails that were all sent to investors either prior to investing or after investing. However, with respect to correspondence, although he signed documents (such as share certificates and correspondence to investors), O'Brien explained in his compelled testimony that he did not create the actual documents. According to O'Brien, it was Campbell who created the documents and Campbell would bring the documents to O'Brien on about a weekly basis to be signed. O'Brien's signature was also on the Al-tar Executive Summary document that was sent to Al-tar investors.

- Phone records show that O'Brien personally called Al-tar investors from his cell phone. Staff's investigator Vanderlaan testified that on O'Brien's cell phone bill he found a number of long distance calls to Al-tar investors and that Staff phoned these investors and verified that they were in fact contacted by O'Brien.

- O'Brien spoke to a number of investors regarding Al-tar's prospects. For example, Vanderlaan testified that two investors from Manitoba were contacted by O'Brien, and O'Brien reassured them on the phone that Al-tar would be going public once the price of oil goes back up.

- He wrote cheques from the Al-tar bank accounts to pay himself, Canadian Oil Riggers, Sterling, Premium Resource and 1290310. He also completed point-of-sale transactions and obtained cash withdrawals from the Al-tar bank accounts. We note that O'Brien was the sole director of Sterling and Sterling received the sum of $33,800 from the Al-tar TD account.

- He received $147,791.50 of Al-tar's investor funds ($113,991.50 directly from the Al-tar bank accounts and $33,800 that was paid to Sterling).

[92] To summarize, from the conduct listed above, it is evident that O'Brien was Al-Tar's sole owner, President and CEO, he established and set up the Al-tar office and O'Brien arranged the payments for Al-tar's office services. He was responsible for setting up the infrastructure for Al-tar, including, opening bank accounts, mailboxes, phone lines, renting the apartment…etc.

[93] O'Brien contacted and communicated with investors regarding Al-tar's business and securities. He also signed correspondence and share certificates that were sent to investors.

[94] O'Brien was also involved with the transfer of investor funds. He received funds from Al-tar investors and deposited them into the Al-tar bank accounts. He then subsequently transferred Al-tar investor funds to himself, Canadian Oil Riggers, Sterling, Premium Resource and 1290310.

[95] We conclude that O'Brien engaged in trades and acts in furtherance of trades in Al-tar securities in Ontario within the meaning of the Act. O'Brien was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

Campbell

[96] We find that Campbell's conduct in connection with Al-tar, Alberta Energy and Drago breached subsection 25(1)(a) of the Act.

[97] With respect to Al-tar, Campbell engaged in the following conduct:

- Campbell played an integral role in setting up Al-tar's website: www.altarenergycorp.com. This website was available to the public commencing on May 3, 2006, and it solicited investment in Al-tar, which purported to generate and develop continuous growth for both the company and its shareholders.

Gomes, in his compelled testimony, explained that he created the Al-tar website at the instruction of Campbell who provided him with details for the content of the Al-tar website. Gomes also mentioned that Campbell paid him for the development of the Al-tar website in cash, however, he could not recall the exact amount of the payment.

- Campbell also solicited Al-tar investors using the alias Brown (as discussed at paragraphs 66 and 67). Vanderlaan testified that at least eight Al-tar investors spoke to an individual named Brown (which was an alias used by Campbell). Staff also tendered into evidence five investor questionnaires (relating to Al-tar investors who did not testify at the hearing). During the course of the investigation these five Al-tar investors answered a series of questions about Al-tar in the questionnaires. The investor questionnaires show that these five Al-tar investors spoke to Brown prior to investing in Al-tar. These five Al-tar investors invested the following amounts in Al-tar between June and August 2006: $1,500, $5,000, $3,000, $1,500 and $1,500.

- Campbell, using the alias Brown, also picked up investor packages, including investor cheques from Apple Self Storage. This was confirmed by the testimony of the Apple Self Storage Manager who identified a picture of Campbell as the individual he knew to be Brown, who picked up the Purolator packages for Al-tar.

- Campbell's company Canadian Oil Riggers also received $174,320.93 in its bank account from Al-tar. As seen from the flow of funds chart in paragraphs 76 and 77 these funds were Al-tar investor funds that flowed to Canadian Oil Riggers. Subsequently funds from Canadian Oil Riggers were also transferred to 2108709 (another company controlled by Campbell).

[98] In his compelled testimony, Campbell states that his involvement with Al-tar was limited to consulting for Al-tar, although he did not know exactly what Al-tar was actually doing, never produced his consulting contract and was unable to recall what his consulting contract with Al-tar required him to do.

[99] We also note that in his compelled testimony, Campbell explained he was paid a fee for providing names of potential investors to O'Brien. Campbell also admitted that some of the names of investors he provided were Limelight investors.

[100] We conclude that Campbell engaged in trades and acts in furtherance of trades in Al-tar securities in Ontario within the meaning of the Act. Campbell was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

[101] With respect to Alberta Energy, Campbell engaged in the following conduct:

- Along with Sylvester, Campbell was involved with Alberta Energy's banking arrangements. Specifically, Campbell attended when the Alberta Energy TD

account was opened, he received the bank card, PIN and signed blank cheques from Sylvester.

- Campbell was involved with providing some of the content for the Alberta Energy website (www.albertaenergycorp.com). Specifically, Campbell provided a list of contact names to be used for the Alberta Energy website. The rest of the content of the Alberta Energy website was copied from the Al-tar website. Carlos Da Silva provided Gomes instructions to copy text from the Al-tar website and to use it on the Alberta Energy website, and Campbell was present during some of these discussions. In his compelled testimony, Gomes clarified that all of the content on the Alberta Energy website was copied from the Al-tar website and Campbell provided the list of contacts for the website.

- Campbell rented the mailbox for Alberta Energy at the Money Mart located at 1576 Queen Street West. This is the address which is listed on the Alberta Energy website. In his compelled testimony, Campbell admitted that he was the only person who had access to the Alberta Energy mailbox.

- While using the alias Brown, Campbell solicited investors residing in the United Kingdom. At the hearing, Investor 6 and Investor 7 testified that they spoke to Brown on the phone, who solicited them to purchase Alberta Energy shares. After these discussions with Brown, Investor 7 purchased 13,000 shares of Alberta Energy for US$19,500 (Canadian conversion was $22,593.03) and Investor 6 purchased 6,550 Alberta Energy shares for £5000 (Canadian conversion was $11,316.50). In addition, both of these investors received emails that were from Brown confirming their investment in Alberta Energy and that share certificates would be sent to them.

- Campbell, using the alias Brown, also sent correspondence from OSG Capital to Alberta Energy investors providing wire transfer instructions, confirming their investments, and explaining that share certificates would be sent out.

- Canadian Oil Riggers, which was controlled by Campbell, received a total of $33,950.53. The evidence before us shows that $33,909.53 was from Alberta Energy investors. Vanderlaan provided evidence to show that one day after Investor 7's funds were wired to Alberta Energy's TD account, a wire transfer in approximately the same amount was made to the Canadian Oil Riggers account. Similarly, two days after Investor 6's funds were wired to Alberta Energy's TD account, a wire transfer in approximately the same amount was made to the Canadian Oil Riggers account. We note that Campbell is the sole signatory on the Canadian Oil Riggers account.

[102] We conclude that Campbell engaged in trades and acts in furtherance of trades in Alberta Energy securities in Ontario within the meaning of the Act. Campbell was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the

Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

[103] With respect to Drago, Campbell admitted in his compelled testimony that he engaged in the following conduct:

- Campbell stated that he set up Drago, as a service for Sylvester and that he was paid for this service.

- Campbell played a role in looking for office space and phone services for Drago. Specifically, Campbell contracted for services for Drago from the Telsec Business Centre, a virtual office, located at 1 Yonge Street in Toronto, which provided phone, fax, answering services and mail collection.

- Campbell attended the Telsec Business Centre to pick up Drago investor cheques that were sent there.

- Campbell attended with Sylvester when the Drago TD account was opened and Sylvester gave Campbell the bank card, PIN along with signed blank cheques. Therefore, Campbell had access to the Drago TD account, which investor funds were deposited into.

- In addition to being paid for his services for setting up Drago, Campbell also explained that he was paid a fee of at least 10% if investors invested in Drago, however, he could not remember if he did receive money from Drago.

- Campbell admitted that he wrote a cheque from the Drago TD account to his company Canadian Oil Riggers for the amount of $7,475. According to Campbell, this money was to pay him for the services he was providing to Drago. In total, Drago investor funds in the amount of $8,925 were transferred from Drago to Campbell's Company Canadian Oil Riggers. The transfer of these investor funds to Canadian Oil Riggers was done in an almost identical method as in Alberta Energy, that is funds were transferred from Drago to Canadian Oil Riggers within a few days of the funds being received by Drago.

[104] We conclude that Campbell engaged in trades and acts in furtherance of trades in Drago securities in Ontario within the meaning of the Act. Campbell was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

Da Silva

[105] We find that, Da Silva's conduct in connection with Al-tar breached subsection 25(1)(a) of the Act.

[106] With respect to Al-tar, Da Silva engaged in the following conduct:

- Da Silva solicited Al-tar investors using the alias Daniels (as discussed at paragraph 68). Specifically, Investor 1 testified that in early 2006 he was contacted by Daniels to invest in a company called Limelight and then subsequently several months later he was called again to invest in Al-tar. After conversing on the phone with Daniels, Investor 1 invested $4,999.50 in Al-tar. Investor 2 also testified that he was contacted by Daniels around September 2006, and he was advised that Al-tar was a new company looking for venture capital. Investor 2 invested $15,000 in Al-tar.

- We were also provided with evidence of phone records showing that phone calls were made to investors from Da Silva's residence at 51 Eastpark Blvd. in Scarborough (where he operated his business Premium Resource in his basement). Specifically, five Al-tar investors were called from Da Silva's residence at 51 Eastpark Blvd.

- Da Silva's company, Premium Resource, received a total of $207,030 directly from the Al-tar bank accounts. Da Silva admitted he received money from Al-tar from July 2006-2007, although he stated it was for his services as a marketing consultant. We do not accept that Da Silva provided marketing services. We find that he was paid to solicit investor funds and was part of the investment scheme.

[107] In our view, the conduct listed above demonstrates that Da Silva engaged in acts in furtherance of trades of Al-tar securities in Ontario. As established by the case law, soliciting investors is an act in furtherance of a trade and Da Silva (using the alias Daniels) solicited individuals over the phone from his home address and the evidence shows that individuals actually invested in Al-tar after having discussions with him. In addition, investor funds collected by Al-tar were paid out to Da Silva's company Premium Resource.

[108] We conclude that Da Silva engaged in trades and acts in furtherance of trades in Al-tar securities in Ontario within the meaning of the Act. Da Silva was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

Sylvester

[109] We find that Sylvester's conduct in connection with Alberta Energy and Drago breached subsection 25(1)(a) of the Act.

[110] With respect to Alberta Energy, Sylvester, who was the sole director and President, engaged in the following conduct:

- Sylvester opened the Alberta Energy TD account and was listed as the sole signatory on the account. Sylvester admitted in his compelled testimony that he opened the Alberta Energy TD account on November 14, 2006 and Campbell was with him at the time. Sylvester also gave blank cheques that he signed to Campbell and gave Campbell the bank card and PIN for the account, thus providing Campbell access to the account.

- Sylvester sent correspondence to Investor 7, which he signed in his capacity as President and CEO of OSG Capital. We note that Investor 7's OSG Capital investment statements state that Investor 7 invested in Alberta Energy shares. Therefore, Sylvester through OSG Capital received and managed Alberta Energy investor funds.

[111] We conclude that Sylvester engaged in trades and acts in furtherance of trades in Alberta Energy securities in Ontario within the meaning of the Act. Sylvester was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

[112] With respect to Drago, Sylvester, who was the sole director of Drago, engaged in the following conduct:

- Sylvester opened the Drago TD account in June 2007 and admitted in his compelled evidence that Campbell was with him at the time. Sylvester was also the sole signatory on the account. Sylvester also gave blank cheques that he signed to Campbell and gave Campbell the bank card and PIN for the account, thus providing Campbell access to the account.

- $9,000 of funds from three Drago investors ($3000 from Investor 8; $1,500 from Investor 9; and $4,500 from an investor who did not testify at the hearing) were deposited into the Drago TD account, which listed Sylvester as the sole signatory.

[113] We conclude that Sylvester engaged in trades and acts in furtherance of trades in Drago securities in Ontario within the meaning of the Act. Sylvester was not registered in any capacity with the Commission. He violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to him (the availability of exemptions is further discussed starting at paragraph 143).

Al-tar

[114] We find that Al-tar breached subsection 25(1)(a) of the Act. Specifically:

- Potential Al-tar investors, located in Ontario and elsewhere across Canada, were solicited starting in the spring of 2006 and continuing into early 2007 by telephone, email and fax transmission.

- Potential Al-tar investors were contacted by phone on a repeated basis by Al-tar representatives, including: Daniels, Andrews, Brown, Jakes and Jones to invest in Al-tar shares. These investors were told that Al-tar was an aspiring energy company that was poised to go public and they could expect a return on their investment of up to 300 – 700 percent within six months. Potential investors were sent an Executive Summary and were directed to review Al-tar's website. In addition, once Al-tar investors invested, follow-up calls were made to these investors to persuade them to reinvest.

- Al-tar corporate documents which dealt with Al-tar share offerings were sent to investors to solicit investment in Al-tar. For example, Al-tar investors were sent the Al-tar Executive Summary (signed by O'Brien as Al-tar's President and CEO), which promoted the company to solicit investments, which stated, in part:

  > Dear Investor:
  >
  > We are seeking self-directed investors for this lucrative private placement and would like to introduce ourselves to qualified parties. Al-Tar Energy Corp. has been set up to take advantage of the opportunities in the oil sector … If you are seeking an opportunity that offers the potential to achieve gains in both the short term and long term, we may have what you're looking for. A minimal investment is all it takes to help you get there.
  >
  > …
  >
  > We anticipate our initial projects to generate immediate revenues and, once we have sufficient cash reserves, shareholders will receive 50% of all declared dividends. We need investors who share in our vision.

- Al-tar issued press releases which were posted on the Al-tar website and sent to investors to solicit investment or reinvestment in Al-tar shares. The press releases promoted Al-tar as a good value company to invest in. For example:

  - the press release dated September 26, 2006 described Al-tar as a company: "…focused on Growth, Value and Performance as it builds a Super-Independent oil and gas company. This strategy capitalizes on the world-class assets and high-quality, long-life reserves that Altar [sic] has established since its inception."

  - the press release dated July 19, 2006 also described Al-tar's business dealings: "Altar [sic] Energy Corp. has entered into a letter of intent with another company that has vast exposure in the tar sands. The agreement is for the acquisition by Altar Energy of rights to recover precious metals from certain tailings produced by the company."

- Once funds from Al-tar investors were received, Al-tar share certificates along with correspondence, were sent to investors.

[115] In addition, potential investors were directed to Al-tar's website which contained information to excite, solicit and induce investors. The wording used on the website portrayed Al-tar very positively as a company which was destined for growth and would provide superior returns for investors. For example, the website stated the following:

> The principle focus of Al-tar Energy Corp. is to generate continuous growth for both the company and its shareholders. This growth is formulated to be a diverse and stable income and cash flow stream, providing a superior return on shareholder investment.
>
> Our corporate objective is to achieve these shareholder returns by precise evaluation and acquisition of income producing assets. These assets in turn, fall into the company's main stream of investments and businesses that are both complementary to their sectors and profitable to the operations of the company.
>
> We aim to be a rapidly expanding growth-oriented asset accumulation company, engaged in building shareholder value through the acquisition, ownership and operation of strategically chosen investments.

[116] As a result of Al-tar's investment solicitation activities, Al-tar raised a total of $615,199.50 from 120 investors. We note that first time investors were solicited to buy Al-tar shares at $1.50 per share and subsequently some of the Al-tar investors were solicited again for a combination of shares and warrants with a price of $1.00 per share.

[117] At the hearing, we heard from five Al-tar investors who invested the following amounts:

- Investor 1 invested twice in Al-tar: the first share purchase was for 3,333 shares at $1.50 for a total investment for $4,999.50, the second investment was for 2,667 shares at a price of $1.00 per share for a total investment of $2,667.00. Investor 1 testified that he invested a second time because Al-tar came back to existing shareholders to give them an opportunity to buy in again at a lower price.

- Investor 2 invested $15,000 (at $1.00 per share) and received a share certificate for 15,000 shares in Al-tar. In his testimony, Investor 2 explained that he got a deal and paid a reduced price of $1.00 per share because he referred two other investors to invest in Al-tar.

- Investor 3 invested twice in Al-tar, the first investment was for $4,500 at $1.50 per share for 3,000 Al-tar shares and the second investment was for $6,000 at $2.00 per share for 3,000 shares plus 3,000 warrants. With respect to the second

investment made, Investor 3 testified that he was sent a press release from Al-tar that explained when purchasing a share you would also get a warrant that could be exercised at a later date.

- Investor 4 invested twice in Al-tar. The first investment was for $2,250 for 1,500 shares at $1.50 per share. The second investment was for $3,000 for 1,500 shares at $2.00 per share and 1,500 warrants. Investor 4 testified that she invested in Al-tar a second time because she was told that Al-tar was progressing and Al-tar felt that their returns would be much bigger than originally anticipated, Al-tar found more precious metals and once they would go public the value of the shares would go up phenomenally.

- Investor 5 invested $6,000 in Al-tar purchasing 4,000 shares at $1.50 per share.

[118] We conclude that Al-tar engaged in trades and acts in furtherance of trades in its securities in Ontario within the meaning of the Act. It solicited funds from investors, received funds and issued share certificates. Al-tar also used press releases and its website to portray Al-tar as a legitimate high growth company in order to excite investors and induce them to invest and re-invest. Al-tar and its representatives were not registered in any capacity with the Commission. Al-tar violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to it (the availability of exemptions is further discussed starting at paragraph 143).

Alberta Energy

[119] We find that Alberta Energy breached subsection 25(1)(a) of the Act. Specifically:

- Potential Alberta Energy investors located in Europe were solicited in spring and summer of 2007 by telephone.

- Potential Alberta Energy investors were contacted by phone on a repeated basis by Alberta Energy representatives, including Brown and individuals who worked at OSG Capital (and other individuals, whose names the witnesses could not recall), to invest in Alberta Energy shares.

- Potential Alberta Energy investors were directed to review the website for more information about the company to help them with their investment decisions. The Alberta Energy website was www.albertaenergycorp.com. It solicited investments in Alberta Energy, which purported to generate and develop continuous growth for both the company and its shareholders. The Alberta Energy website was created and available to the public commencing on November 17, 2006. The content of the Alberta Energy was almost identical to the Al-tar website. It included the identical toll free phone number and the same spelling mistakes as on the Al-tar website. The only differences were the company name, the listed Board of Directors and the listed address. We were also provided with the

compelled testimony of Gomes, which stated that Gomes was instructed to copy the content of the Al-tar website and use it on the Alberta Energy website. Just like the Al-tar website, the content of the Alberta Energy website was designed to excite and induce individuals to invest in Alberta Energy.

- Alberta Energy issued a press release which was posted on the Alberta Energy website and sent to investors to solicit investment in Alberta Energy shares. The February 7, 2007 press release described Alberta Energy's business activities as follows:

> Alberta Energy Corp. has entered into a letter of intent to buy a royalty stake in Alberta Oil Sands Pipeline Ltd (AOSPL). …
>
> AOSPL is the exclusive transporter of synthetic oil production from Syncrude Canada Ltd.'s plant, near Fort McMurray, Alberta, to Edmonton.

- Potential Alberta Energy investors were also enticed by email solicitations which promoted Alberta Energy investments as a good deal and offered investments at a substantial discount. For example, after being solicited on the phone about Alberta Energy, Investor 6 received an email from OSG Capital which stated:

> You can buy the stock directly from the company at $3.00 U.S. But if you buy it from us we are selling it to our clients at $1.50 U.S. because we bought out 15% of the company and we got a nice discount and we are giving an incentive to new clients and selling the shares at our price as a way to attract new investors to our firm.
>
> You can check out our company web site at: www.osgcapital.com
>
> Or check out Alberta Energy's Corp's site at www.albertaenergycorp.com

- After investing, Alberta Energy investors were provided with correspondence and share certificates. Correspondence regarding Alberta Energy came from OSG Capital.

[120] As a result of these investment solicitation activities relating to Alberta Energy, two investors invested in Alberta Energy raising a total of $33,909.53. At the hearing, we heard from the two Alberta Energy investors who invested the following amounts:

- Investor 6 invested £5000 in Alberta Energy (for 6,550 shares at US$1.50 per share, Canadian conversion was $11,316.50). Investor 6 testified that he did not receive any documentation regarding Alberta Energy prior to investing, but he was directed to Alberta Energy's website. Based on the website, and internet search, Investor 6 thought Alberta Energy was a reputable company. Investor 6 also received a share certificate for his investment.

- Investor 7 invested US$19,500 in Alberta Energy (for 13,000 shares at US$1.50 per share, Canadian conversion was $22,593.03). Investor 7 also testified that he was provided with the Alberta Energy Executive Summary by email, which he printed off and read prior to investing. Investor 7 was also issued a share certificate for his investment in Alberta Energy.

[121] We conclude that Alberta Energy engaged in trades and acts in furtherance of trades in its securities in Ontario within the meaning of the Act. It solicited funds from investors through OSG Capital, received funds and issued share certificates. Alberta Energy also used false press releases and its website to portray Alberta Energy as a legitimate high growth company to excite investors and induce them to invest. Alberta Energy and its representatives were not registered in any capacity with the Commission. Alberta Energy violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to it (the availability of exemptions is further discussed starting at paragraph 143).

Drago

[122] We find that Drago breached subsection 25(1)(a) of the Act. Specifically:

- Potential Drago investors were solicited in early summer of 2007 by telephone.

- Potential Drago investors were contacted by phone on a repeated basis by salespersons named Jason Strong and Terry Gomez, to invest in Drago shares. We note that these individuals worked for OSG Capital.

- After initial contact with an investor, a Drago Executive Summary document was sent to the investor to convince them to invest. Drago investors were sent information by fax that informed them that they had the option to either invest in shares at a price of $2.50 per share with a guaranteed fixed-interest option of 12% or invest in common shares at a price of $1.50 per share. Investors were also enticed to invest with promises that the share price would increase by ten times in value.

- Drago also solicited investors via its website, www.dragogoldcorp.com, which was available to the public commencing on May 23, 2007. The website contained promotional information about the company to give investors the impression that it would be a good investment. However, we note that material on the Drago website was copied from the website of another company, Geoandine Mining Corp.

- Once investors agreed to invest, a confirmation fax was sent to investors for their signature and arrangements were made to have a courier to pick up the cheque

from the investor. Courier packages for Drago were delivered to the Telsec Business Centre, a virtual office, located at 1 Yonge Street in Toronto.

- Eventually, after investors transferred funds to Drago, Drago share certificates were sent out. However, we note that shares certificates were only sent to investors after investors inquired by phone and fax to get them.

[123] As a result of Drago's investment solicitation activities, three investors invested in Drago raising a total of $9,000. At the hearing, we heard from two Drago investors who invested the following amounts:

- Investor 8 invested $3,000 in Drago (2000 Drago shares at $1.50 per share). Investor 8 testified that he decided to invest in Drago based on the success of Limelight. He explained that he was contacted a year or two earlier to invest in Limelight and he had decided not to invest. However, when he was called about Drago and the salesperson on the phone informed him that they had done so well with Limelight, Investor 8 explained that he felt like he missed the boat on Limelight and now Drago was another opportunity to invest.

- Investor 9 invested $1,500 (1000 Drago shares at $1.50 per share). Investor 9 also testified that when he was solicited on the phone, he was told that Drago would be similar to a previous venture called Limelight where investors could get in at an introductory price and then sell out at a higher price.

[124] We conclude that Drago engaged in trades and acts in furtherance of trades in its securities in Ontario within the meaning of the Act. Drago also used its website to advertise and portray Drago as a legitimate high growth company to excite investors and induce them to invest. It solicited funds from investors through OSG Capital, received funds and issued share certificates. Drago and its representatives were not registered in any capacity with the Commission. Drago violated subsection 25(1)(a) of the Act, and there were no registration exemptions available to it (the availability of exemptions is further discussed starting at paragraph 143).

iii. Findings

[125] Based on the evidence discussed above, we find that all of the Respondents breached subsection 25(1)(a) of the Act by engaging in trades and/or acts in furtherance of trades, none of the Respondents was registered and there were no registration exemptions available to them (the availability of exemptions is further discussed starting at paragraph 143).

B. Did Da Silva and Campbell engage in trades or acts in furtherance of trades that breached the Commission's cease trade orders dated April 13, 2006 and May 10, 2006?

i. Commission Order Against Da Silva

[126] On May 10, 2006, the Commission issued its reasons and order in *Allen Sanctions.* Da Silva was a respondent in this matter, and he was ordered, *inter alia* to cease trading for a period of seven years from the date of the order and the order also removed the availability of exemptions. Da Silva was provided with a carve out to trade for his own account in a registered retirement savings plan account.

ii. Commission Orders Against Campbell

[127] On April 13, 2006 the *Limelight Temporary Order* was issued by the Commission, which ordered Campbell *inter alia* to cease trading in all securities. The *Limelight Temporary Order* also removed the availability of exemptions to Campbell.

[128] The *Limelight Temporary Order* was extended and in force against Campbell until the conclusion of that matter in 2008. On December 8, 2008, the Commission issued a permanent cease trade order against Campbell, with the exception that Campbell could only trade for his own account or that of his spouse in a registered retirement savings plan account.

iii. Findings

[129] Based on our review of the evidence regarding breaches of section 25(1) of the Act, we find that both Da Silva and Campbell engaged in trades and acts in furtherance of trades.

[130] This trading took place while Commission orders were in place prohibiting trading activities.

[131] Da Silva engaged in trading activities with respect to Al-tar during July 2006-2007, which overlaps with the Commission order issued on May 10, 2006, which prohibited Da Silva from trading for a period of seven years and removed all exemptions. We note that the trading activities that Da Silva engaged in did not fall under the trading activities permitted by the carve out in the May 10, 2006 Order.

[132] Campbell engaged in trading activities with respect to Al-tar, Alberta Energy and Drago during spring 2006 to fall 2007, which overlaps with the *Limelight Temporary Order* issued on April 13, 2006 which prohibited Campbell from trading in all securities and removed all exemptions.

[133] Therefore, we find that both Da Silva and Campbell breached Commission Orders and this egregious conduct is contrary to the public interest.

C. Did the Respondents Engage in a Distribution without a Prospectus in Breach of Subsection 53(1) of the Act?

i. The Applicable Law

[134] Subsection 53(1) of the Act sets out the prospectus requirement for trades that comprise a distribution:

> No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[135] The definition of "distribution" under subsection 1(1) of the Act states that :

> "distribution", where used in relation to trading in securities, means,
>
> (a) a trade in securities of an issuer that have not been previously issued
>
> […]

[136] The prospectus requirement plays an essential role for the protection of investors. As stated by the Court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.) at 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". The prospectus requirement ensures that prospective investors have sufficient information to ascertain the risk level of their investment and to make informed investment decisions (*First Global, supra* at para. 145).

[137] For a trade in securities of an issuer that have not been previously issued, it is therefore important that a prospectus be issued to protect the public.

ii. Analysis

[138] As established above in our discussion of section 25(1)(a) of the Act, the Respondents all engaged in trades and/or acts in furtherance of a trade, as defined in the Act. The Respondents have therefore met the trading requirement under part (a) of the definition of "distribution" under the Act.

[139] The second requirement of this definition is that the securities in question have not been previously issued. We note that Al-tar, Alberta Energy and Drago were promoted as new companies which would have exceptional growth and eventually be listed on an exchange in the future.

[140] There is no record that any of the Corporate Respondents ever filed as a reporting issuer or filed a prospectus in Ontario. In addition, none of the Individual Respondents ever prepared a prospectus on behalf of any of the Corporate Respondents.

[141] Additionally, there is no evidence that any investors were provided with a prospectus with respect to Al-tar, Alberta Energy or Drago.

iii. Findings

[142] We conclude that all the Respondents engaged in trades or acts in furtherance of trades. At the time of these acts, shares in Al-tar, Alberta Energy and Drago had not previously been issued, and we therefore conclude that the trades constitute a distribution. Since no prospectus was filed for these trades, we find that all the Respondents have contravened section 53(1) of the Act.

D. Were any Registration or Prospectus Exemptions Available to the Respondents?

i. The Applicable Law

[143] National Instrument 45-106 ("NI 45-106") provides exemptions to the registration and prospectus requirements in the Act if certain conditions are met.

[144] Once Staff has shown that the Respondents have traded without registration and distributed securities without a prospectus, the onus shifts to the Respondents to establish that one or more exemptions from the registration and prospectus requirements are available to them (*Limelight Merits, supra* at para. 142).

The Accredited Investor Exemption

[145] Section 2.3 of NI 45-106 provides an exemption from the prospectus and registration requirements for trades in a security if the purchaser is an accredited investor and is purchasing as principal.

[146] An accredited investor is defined in section 1.1 of NI 45-106 and includes:

> […]
>
> (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.

[…]

ii. Analysis

[147] We find that there is insufficient evidence to establish that the investors qualified as accredited investors.

[148] During the hearing, Staff asked the investors who testified questions about their investment knowledge and financial circumstances at the time they invested in Al-tar, Alberta Energy and/or Drago.

[149] With respect to Al-tar, we note that:

- Investor 1 testified that when he was solicited to purchase Al-tar shares he was not asked any questions about his investment knowledge, assets or income.

- Investor 2 testified that he did not have any experience investing in stocks and that his investment in Al-tar was his first stock investment. Prior to the Al-tar investment, Investor 2 had only made small investments dealing with his bank. Investor 2 testified he was not asked any questions about his income and assets when he was solicited to purchase shares in Al-tar.

- Investor 3 testified that when he was solicited to purchase Al-tar shares he was not asked any questions about his investment knowledge, assets or income. Investor 3 also testified that he had minimal experience investing in the stock market although he had previously purchased some shares in publicly traded companies.

- Investor 4 testified that when solicited to purchase Al-tar shares she was asked questions about her financial situation and her income. She testified that her husband handled the finances and their previous investments were in mutual funds and in her view her husband's investment experience was not very extensive.

- Investor 5 testified that when he was solicited to purchase Al-tar shares he was not asked any questions about his investment knowledge, assets or income. He also testified that he considered his experience investing in stocks to be below average.

[150] Although we did not hear testimony from all 120 Al-tar investors, and it is possible that some of these 120 investors were accredited investors, there was no

evidence before us that this was the case. In addition, the evidence of the Al-tar investor witnesses who testified clearly establishes that they did not fit the criteria of accredited investors defined in section 1.1 of NI 45-106. Accordingly, no exemption to registration was available to the Respondents.

[151] With respect to Alberta Energy, we heard testimony that:

- Investor 6 was not asked about his financial status prior to investing and Investor 6's testimony revealed that he did not meet the threshold to qualify as an accredited investor. Investor 6 also testified that he was not a sophisticated investor. He had recently come into some money and he invested because Brown was very convincing when he called him about the Alberta Energy investment opportunity.

- Investor 7 did not meet the threshold to qualify as an accredited investor. He testified that he was asked questions about his yearly income, employment and whether he had enough funds to purchase shares. Investor 7 also testified that prior to Alberta Energy he had never invested in stocks before.

[152] With respect to Drago, two Drago investors testified that:

- Investor 8 did not meet the threshold to qualify as an accredited investor. He was not an experienced or sophisticated investor and he did not have a lot of income disposable for investment. In particular, Investor 8 testified that he was a single parent raising three children and trying to get them educated and while Investor 8 had some funds to invest, he did not have much money to throw away.

- Investor 9 did not meet the threshold to qualify as an accredited investor. In his testimony he explained that he was asked about his income and that he told the Drago representative who he talked to on the phone (Terry Gomez) that he was not a qualified investor. However, Terry Gomez assured Investor 9 that he did not have to have a certain income and that he could get in for a very small investment.

[153] We also note that some of the investors were not asked about their financial status prior to investing. However, some investors were asked about their financial status. We find that the investors who were asked about their finances when they were solicited to invest funds were only asked about their finances for the purpose of determining how much money they had available to invest, not to determine their accredited investor status.

[154] As a result, we conclude that none of the investor witnesses met the threshold to qualify as an accredited investor. Therefore, the registration and prospectus exemptions were not available to the Respondents.

iii. Findings

[155] In our view, investors in Al-tar, Alberta Energy and Drago are precisely the type of investors who are meant to be protected by the registration and disclosure requirements. We find it troubling that Al-tar, Alberta Energy and Drago investors were not provided with adequate disclosure. Basically, investors were provided with false and misleading information about Al-tar, Alberta Energy and Drago and they had little clue about what was being done with their money. The majority of these investors had limited investing experience and a number of them testified that it was the first time that they ever invested in stocks.

[156] In addition, under section 6.1 of NI 45-106, issuers are required to file reports of exempt distributions with the Commission within 10 days of the distribution. There is no evidence of any such filings in this matter.

[157] Based on the foregoing, we find that there were no registration or prospectus exemptions available to the Respondents.

E. Did the Respondents Breach Subsection 38(2) of the Act by Making Prohibited Undertakings Regarding the Value or Price of Securities?

i. The Applicable Law

[158] Subsection 38(2) of the Act prohibits persons or companies from making undertakings regarding the future price of securities for the purpose of effecting a trade:

> 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.

[159] The purpose of this section is investor protection. Undertakings as to future value of shares are often made to vulnerable and unsophisticated investors, and this subsection seeks to prevent the sale of securities by means of promises of future prices and returns.

[160] It is important to note that subsection 38(2) requires that an undertaking be made. A simple representation is not enough to trigger this subsection of the Act.

[161] With respect to the meaning of the term "undertaking", in the *Limelight Merits* case the Commission relied on the interpretation in *Re National Gaming Corp*. (2000), 9 A.S.C.S. 3570 ("*National Gaming*"), where 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.
>
> (*National Gaming, supra* at p. 16)

[162] In the *Limelight Merits* case, the Commission interpreted subsection 38(2) of the Act and stated 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.
>
> (*Limelight Merits, supra* at para. 164)

[163] The Commission also clarified that an undertaking is more than a mere representation; however, it may amount to something less than a legally enforceable obligation (*Limelight Merits, supra* at para. 167).

[164] The Commission case law has found that representations amounting to promises, guarantees or assurances of future value constitute undertakings which breach subsection 38(2) of the Act. For example, in *Aatra Resources Ltd.* (1990), 13 O.S.C.B. 5109, the Commission found that the following express representations regarding the future price of shares were undertakings that breached the Act:

> I would assure you, I will practically guarantee you that within the week you will see the stock […] anywhere from twenty cents ($0.20) to fifty cents ($0.50) higher.
>
> (*Aatra Resources Ltd., supra* at para. 34)

[165] Therefore, promises which specify a target value in a specific time frame will comprise the type of conduct that is captured by subsection 38(2) of the Act.

[166] However, not all statements about future value of shares will breach subsection 38(2) of the Act. As explained in the *Limelight Merits* case:

> …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.
>
> (*Limelight Merits, supra* at para. 170)

[167] This was also discussed in the *National Gaming* case:

> …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.
>
> (*National Gaming, supra* at p. 16)

[168] Therefore, to determine whether a statement amounts to more than a prediction or speculation about future value and falls into the category of an undertaking, the context of the statement and the specificity of the statement regarding the future value must be considered. In addition, it is "not necessary to show that all the elements of an enforceable contract existed" (*Limelight Merits, supra* at para. 167) All of this must be considered in light of the objective of the Act to protect investors.

[169] In order to determine whether the Respondents made undertakings with respect to the future value or price of securities, we must consider the surrounding circumstances and whole context in which statements were made to investors regarding the future value or price of securities of Al-tar, Alberta Energy and Drago.

ii. Analysis

[170] The following are our findings regarding breaches of subsection 38(2) of the Act based on the evidence presented at the hearing.

O'Brien

[171] We find that there is insufficient evidence to find that O'Brien breached subsection 38(2) of the Act.

[172] We were not provided with any evidence indicating that O'Brien spoke to any investors about Al-tar's share price (or any of the other Corporate Respondents) or made undertakings, including promises which specify a future value for Al-tar's share price in a specific time frame.

[173] As a result, we find that O'Brien did not breach subsection 38(2) of the Act.

Campbell

[174] We find that there is insufficient evidence to find that Campbell breached subsection 38(2) of the Act.

[175] Campbell, using the alias Brown, spoke to investors over the phone and made statements about the target share price of some of the Corporate Respondents.

[176] During the hearing, Investor 6 was asked whether Brown made statements regarding an increase in the share price of Alberta Energy shares. Investor 6 answered, "

> To be fair, he probably did, but I can't actually remember. I know it was supposed to be a very quick turnaround. I think originally, the shares were something like about $3, but they, as an organization, had come together, and they'd already pre-bought a lot of shares for $1.50 or something like that. Very cheap to get involved.
>
> (Transcript April 23, 2009 at p. 10 lines 14-20)

[177] While the statements made by Campbell to Investor 6 enticed him to invest, these statements fall short of an undertaking.

[178] Investor 7 also testified that Brown spoke to him about investing in Alberta Energy and that is was possible to invest at an early stage to get shares at a good price. Investor 7 also spoke to Terry Gomez about investing in Alberta Energy shares. According to Investor 7, both Brown and Terry Gomez indicated that the share price of Alberta Energy would rise when the company would eventually go public and when the company would eventually find oil and start pumping it out of the ground. However, Investor 7 testified that he could not remember if he was provided any specific numbers regarding the increase in share price.

[179] In our view, the statements made by Campbell (while using the alias Brown) do not qualify as promises or undertakings as to the future share price of the Corporate Respondents. While representations about the future share price were used to entice investors, we find that they were high pressure sales tactics, not statements that qualify as undertakings as there was no guarantee or promise involved.

[180] As a result, we find that Campbell did not breach subsection 38(2) of the Act.

Da Silva

[181] We find that there is insufficient evidence to find that Da Silva breached subsection 38(2) of the Act.

[182] Da Silva, using the alias Daniels, spoke to investors over the phone and made statements about the target share price of Al-tar's shares.

[183] We heard testimony from Investor 1 that Daniels told him that Al-tar had a target share price of $10 to $15 once the company would go public. He was only told that it was a target price.

[184] Investor 2 testified that he was told by Daniels that Al-tar was "going to hit – hit the market and hoped to be trading at roughly about $6 a share" (Transcript April 23, 2009 at p. 70 lines 13-14). We note this was an approximate target that was given to Investor 2 and not a firm undertaking.

[185] In our view, the statements made by Da Silva (while using the alias Daniels) do not qualify as promises or undertakings as to the future share price of the Corporate Respondents. While representations about the future share price were used to entice investors, we find that they were high pressure sales tactics, not statements that qualify as undertakings as there was no guarantee or promise involved.

[186] As a result, we find that Da Silva did not breach subsection 38(2) of the Act.

Sylvester

[187] We find that there is insufficient evidence to find that Sylvester breached subsection 38(2) of the Act.

[188] We were not provided with any evidence indicating that Sylvester spoke to any investors about the share price of any of the Corporate Respondents.

[189] As a result, we find that Sylvester did not breach subsection 38(2) of the Act.

Al-tar

[190] We find that there is insufficient evidence to find that Al-tar breached subsection 38(2) of the Act.

[191] As discussed above, Daniels, on behalf of Al-tar, spoke to Investor 1 and Investor 2 about the future target prices for Al-tar shares, but in our view these statements did not qualify as undertakings.

[192] As a result, we find that Al-tar did not breach subsection 38(2) of the Act.

Alberta Energy

[193] We find that there is insufficient evidence to demonstrate that Alberta Energy breached subsection 38(2) of the Act.

[194] We do not have any specific evidence that Alberta Energy itself provided undertakings directly to investors. Alberta Energy investors stated that shares could be purchased through OSG Capital for $1.50 per share and that Alberta Energy was selling

shares directly for $3.00 per share. Investors were sent an email from OSG Capital signed by Terry Gomez, and not from Alberta Energy or its principle, which stated:

> You can buy the stock directly from the company at $3.00 U.S. But if you buy it from us we are selling it to our clients at $1.50 U.S. because we bought out 15% of the company and we got a nice discount and we are giving an incentive to new clients and selling the shares at our price as a way to attract new investors to our firm.

[195] While the evidence shows that some undertakings were made about the price of Alberta Energy shares, these undertakings were made by OSG Capital and not Alberta Energy.

[196] As a result, we find that Alberta Energy did not breach subsection 38(2) of the Act.

Drago

[197] We find that there is insufficient evidence to find that Drago breached subsection 38(2) of the Act.

[198] Correspondence sent to Drago investors indicated that they could either purchase Drago shares for $1.50 per share or they could take advantage of purchasing Drago shares at $2.50 which were subject to a Fixed-Interest Option. Investors were directed to the Executive Summary which provided the following details:

> **Guaranteed Fixed-Interest Option:** At the end of the one year investment term, we guaranteed the return of your original investment, plus guaranteed 12% interest on the investment.

[199] Subsection 38(2) requires that the undertaking relate "to the future value or price of such security". In this case the undertaking does not relate to the future value or price of shares of Drago, it relates to a purported guarantee of return of principal and interest. In our view, the undertaking in this case was intended to entice investors to pay a higher price but it is not an undertaking envisioned in subsection 38(2) of the Act.

[200] Investor 8 also testified that the representative he talked to from Drago, Jason Strong, mentioned that the price of Drago shares would increase, but he could not recall exactly what was said for sure. He also testified that Drago expected to be making money within less than a year and it could potentially become ten times the value. While these statements enticed Drago investors and were high pressure sales tactics contrary to the public interest, we find that the information communicated to Drago investors did not constitute a firm undertaking.

[201] As a result, we find that Drago did not breach subsection 38(2) of the Act.

iii. Findings

[202] There is insufficient evidence to find that the Respondents breached subsection 38(2) of the Act.

[203] None of the statements constituted firm promises or undertakings. Nevertheless, we find that those statements about the future value or target price of the shares of Al-tar, Alberta Energy and Drago were high pressure sales tactics. Such statements were used by the Respondents to entice investors and raise funds. In our view this is contrary to the public interest.

F. Did the Respondents Breach Subsection 38(3) of the Act by Making Prohibited Representations Regarding the Future Listing of Securities?

i. The Applicable Law

[204] 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.

[205] Unlike subsection 38(2) of the Act, subsection 38(3) does not require an undertaking. A representation (in other words a statement) is sufficient to trigger a violation of subsection 38(3) of the Act. For example, in the *Limelight Merits* case, the Commission found that evidence of salespersons stating that Limelight shares would be listed on an exchange constituted a breach of subsection 38(3) of the Act (*Limelight Merits*, *supra* at para. 181).

[206] Therefore, we must determine whether the Respondents made any representations, either written or oral, that shares in Al-tar, Alberta Energy and/or Drago

would be listed on any stock exchange or quoted on any quotation and trade reporting system.

ii. Analysis

[207] Although Staff presented significant evidence in this case that the Respondents made representations about going public, we are not satisfied, in the circumstances of this case, that Staff has proven its subsection 38(3) allegations on a balance of probabilities.

[208] The Respondents made a number of statements to investors that Al-tar, Alberta Energy or Drago would be going public in the near future. The investors testified that they relied on and were influenced by such statements when making their decisions to invest in the shares of Al-tar, Alberta Energy or Drago.

[209] However, we find that these comments did not contain enough specifics to qualify as representations that are prohibited under subsection 38(3) of the Act.

[210] We, therefore, find that there is insufficient evidence to find that the Respondents breached subsection 38(3) of the Act.

[211] Nevertheless, we also find that these statements about going public were false and we conclude that these were made to entice investors to invest or re-invest and that they were used by the Respondents as high pressure sales tactics which we consider to be contrary to the public interest. We discuss this conduct later in section I.

iii. Findings

[212] There is insufficient evidence to find that the Respondents breached subsection 38(3) of the Act.

G. Did the Respondents Engage in Fraud in Breach of Section 126.1 of the Act?

i. The Applicable Law

[213] The basis for an allegation of fraud involving securities is found under section 126.1(b) of the Act, which states:

> **126.1 Fraud and market manipulation** – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[214] Fraud is "one of the most egregious securities regulatory violations" and is both "an affront to the individual investors directly targeted" and something that "decreases confidence in the fairness and efficiency of the entire capital market system" (*Re Capital Alternatives Inc.* (2007), A.B.A.S.C. 79 at para. 308 citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420).

[215] The term fraud is not defined in the Act. Due to the recent introduction of the fraud provision in the Act, there are no decisions from the Commission interpreting this provision. However, we can draw out guidance and principles from criminal and administrative law jurisprudence and decisions from other securities commissions.

[216] The British Columbia Court of Appeal addressed the application of the substantially identical fraud provision in the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, as amended (the "BC Act") in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 ("*Anderson*"). The Supreme Court of Canada denied leave to appeal the *Anderson* decision ([2004] S.C.C.A. No. 81).

[217] In *Anderson*, the British Columbia Court of Appeal reviewed the legal test for fraud and relied on *R. v. Théroux*, [1993] 2 S.C.R. 5 ("*Théroux*"). In *Théroux*, Justice McLachlin (as she then was) summarized the elements of fraud as follows at paragraph 27:

> . . . the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[218] Section 126.1 of the Act has the identical operative language as the fraud provision in the British Columbia Act. In interpreting the fraud provision in the British Columbia Act and with respect to the mental element, the British Columbia Court of Appeal in *Anderson* stated at paragraph 26 that:

> …[the fraud provision of the BC Act] does not dispense with proof of fraud, including proof of a guilty mind. . . . Section 57(b) simply widens

> the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated *by others*, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions. [emphasis in original]

[219] The British Columbia Court of Appeal in *Anderson* further explained at paragraph 29 that:

> Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.

[220] The British Columbia Court of Appeal approach to the legal test in the context of securities fraud as set out in *Anderson* was adopted in *Re Capital Alternatives Inc.*, 2007 ABASC 79, which was affirmed in *Alberta (Securities Commission) v. Brost*, [2008] A.J. No. 1071 (C.A.).

[221] For a corporation, it is sufficient to show that its directing minds knew or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of section 126.1(b) of the Act.

ii. Analysis

O'Brien

[222] We find that O'Brien in his capacity as sole director of Al-tar, engaged in acts of deceit, falsehoods and other fraudulent means that deprived investors of their funds.

[223] First of all, Al-tar's Executive Summary, which was signed by O'Brien in his capacity as CEO and President, provided false information about Al-tar to give investors the impression that Al-tar was a legitimate business. For example, the Executive Summary stated that:

- At Al-tar Energy Corp. we harness the knowledge of great thinkers and combine that with proven strategies to take advantage of the tremendous opportunities in the direct oil and gas arena with a focus on capital preservation.

- … currently has under review projects in some 36 countries.

- Al-tar Energy Corp. focuses on premium oil and gas properties in both the royalty sector as well as non-operated cash flow wells.

[224] All of the statements about Al-tar's activities in the oil and gas industry contained false and misleading statements. We find that Al-tar did not engage in any legitimate business in the oil and gas industry. It was only involved in raising funds from investors.

[225] Al-tar's press releases, which listed O'Brien, in his capacity as CEO and President, as the contact for further information about Al-tar, also contained false and misleading statements about the company. For example:

- A press release dated July 10, 2006, included the following false statements:

    - Altar [sic] Energy Corp. is pleased to announce the appointment of Joseph Black as Quarry manager. Joseph brings over 15 years experience in hard rock quarrying and the aggregate production business.

    - Excellent progress continues to be made in establishing the quarry.

- A press release dated July 19, 2006, included the following false statements:

    - Altar [sic] Energy Corp. has entered into a letter of intent with another company that has vast exposure in the tar sands. The agreement is for the acquisition by Altar Energy of rights to recover precious metals from certain tailings produced by the company.

    - Upon commencement of production, Altar [sic] Energy will receive 85% of the net production revenue …

- A press release dated August 10, 2006, included the following false statements:

    - Altar [sic] Energy Corp. announced today that it has completed the first 10 million shares of its private placement at $1.50 and had commenced the next 10 million private offering at $3.00. The board of directors have agreed to issue a warrant offering to exciting [sic] shareholders of the $1.50 placement.

    - Eric O'Brien, Chief Executive Office concluded. "Altar [sic] now has a healthy balance sheet in the capable hands of an experienced management team. As such, we can now better leverage our assets, including our project sites, product pipeline, and intellectual property estate. While Altar will continue to build on its exposure in the tar sands, we will also expedite out evolution into a more integrated, production-focused company with broader operational capabilities and resources."

- A press release dated August 28, 2006, included the following false statements:

    - Altar [sic] Energy Corp. … announces the signing of a co-development agreement with Canadian Resources Inc., that facilitates cooperation in

respect of activities on lands where Canadian holds the oil sands rights and Altar holds the overlapping metallic and industrial mineral rights. The co-development agreement with Canadian Resources is similar to agreements in place with Syncrude Canada Ltd. and Suncor Energy Inc.

- Altar's [sic] land lease holdings in northeastern Alberta total 124,268 hectares of metallic and industrial mineral permits and leases.

- Altar [sic] is conducting biophysical fieldwork as part of its environmental impact assessment for a permit to operate a limestone quarry, which it expects to file with the Alberta government later this year.

- A press release dated September 5, 2006 contained virtually identical content as Al-tar's previous August 10, 2006 press release.

- A press release dated September 29, 2006, included the following false statements:

    - Altar [sic] Energy Corp. has entered into a letter of intent to buy a royalty stake in Alberta Oil Sands Pipeline Ltd. (AOSPL). The transaction is subject to customary closing conditions and regulatory approval. It is expected to close by November 31, 2006.

    - As one of Canada's (soon to be) leading independent oil and gas companies, Altar's [sic] daily production is expected to exceed 38,000 barrels of oil equivalent in 2011.

[226] All of the transactions mentioned in Al-tar's press releases are outright fabrications. None of them took place. For example, we were also provided with correspondence in evidence that confirmed that the Alberta Oil Sands Pipeline Ltd. transaction was fabricated by Al-tar. In addition, we note that the press releases referred to Al-tar's board of directors, and we had no evidence that Al-tar had a board of directors. Our only evidence is that O'Brien was the sole director of Al-tar.

[227] The facts and figures about Al-tar and its activities mentioned in the press releases were also outright fabrications. For example, Al-tar did not have a quarry, they were not involved with an individual named Joseph Black, there was no production of oil, no experienced management team, no land lease holdings of any kind, no project sites, no product pipeline and no balance sheet.

[228] As stated above at paragraph 91, O'Brien played an integral role in setting up the infrastructure to get Al-tar operating. Specifically, he incorporated Al-tar and set up the bank accounts, which made it possible for Al-tar to accept and transfer investor funds.

[229] We also find that O'Brien, the sole director of Al-tar, had full knowledge of Al-tar's conduct and raised funds from investors when there was no legitimate business

underlying Al-tar. He orchestrated the Al-tar investment scheme. He was fully aware that this would deprive investors of their funds.

[230] Specifically, when asked about Al-tar's business activities in his compelled examination, O'Brien admitted that he did not have much knowledge of Al-tar's activities or the oil and gas industry:

> Q. But you said earlier you don't know very much about the oil business.
>
> A. I don't. That's what I was told to say.
>
> Q. Who told you to say that?
>
> A. Mr. Campbell.
>
> Q. Okay. What does limestone extractions from slag mean? Any idea?
>
> A. I have absolutely no idea.
>
> (Transcript, Examination of Eric O'Brien dated December 11, 2007, at p. 46 lines 2-9)
>
> Q. And to your knowledge the company wasn't doing any business other than just raising capital.
>
> A. To my knowledge, yeah.
>
> Q. They weren't engaged in any actual operations, drilling or otherwise?
>
> A. No. You know, I didn't know what they were doing, to be honest with you. I had understood through Abel that there was going to be, you know, acquisition of oil leases.
>
> (Transcript, Examination of Eric O'Brien dated December 11, 2007, at p. 77 lines 7-15)

[231] O'Brien, Al-tar's sole director, had no experience in the oil and gas industry, contrary to what is stated in Al-tar's press releases, business documents and website.

[232] O'Brien also knew that the information about Al-tar's activities in the oil and gas industry disseminated by Al-tar was false. For example, in his compelled examination, he stated that he was unaware of Al-tar being involved in any lease acquisitions or exploration development, contrary to what was stated in the Al-tar press releases.

[233] As a result of O'Brien's conduct and role in the investment scheme, O'Brien received $147,791.50 of Al-tar investor funds ($133,991.50 directly and $33,800 that was paid to Sterling).

[234] In their testimony, the investor witnesses stated that they thought that they were investing in a legitimate business that was operational, had tangible assets, experienced management and which was partnering with other players in the industry.

[235] We find that investors relied on the false information about Al-tar and its business activities when deciding whether to invest in the company. We also find that the false statements enticed some investors to reinvest in Al-tar.

[236] These fraudulent acts caused deprivation to investors. At least 120 investors invested in Al-tar. They lost their funds and were not paid back. Some of these investors lost their life savings. Many investors borrowed money on credit cards and took money out of their registered retirement and education savings plans in order to invest in Al-tar.

[237] We conclude that O'Brien perpetrated a fraud and breached section 126.1(b) of the Act.

Campbell

[238] We find that Campbell engaged in acts of deceit, falsehoods and other fraudulent means with respect to Al-tar, Alberta Energy and Drago that deprived investors of these three companies of their funds.

[239] As set out in paragraphs 97, 101 and 103, Campbell played an integral role in setting up the infrastructure of the Corporate Respondents. For example, Campbell:

- Provided some of the content for the Al-tar and Alberta Energy websites.
- Accompanied Sylvester when the Alberta Energy and Drago bank accounts were opened and he had direct access to these accounts through bank cards with PINs and signed blank cheques provided to him by Sylvester.
- Rented and controlled the mailbox for Alberta Energy.
- Played a role in setting up infrastructure to get Drago operating.

[240] In addition, Campbell recruited Sylvester to be a director of Alberta Energy. In his compelled testimony Campbell gave the following explanation in his answers to Staff's questions:

> Q. -- allowed them [Alberta Energy] to use that address for their purposes? And so to set this company up, let me just get this right,

you kind of served up Julian Sylvester to them as being willing to act, you know, the nominee director?

A. Yeah. Well, I mean, I explained to Julian what was going on and that was pretty well it. I mean, I made him make the decision.

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 110 line 23 to p. 111 line 5)

[241] As discussed in paragraphs 97 and 101, Campbell solicited investors to purchase shares of Al-tar and Alberta Energy. He used the alias Brown when communicating and corresponding with these investors and lied about his true identity. He also used this alias when picking up investor packages which included investor cheques.

[242] We also find that Campbell had full knowledge of the conduct of the three Corporate Respondents and he raised funds from investors when there was no legitimate business underlying any of the Corporate Respondents. He played a key role in setting up the investment scheme. He was fully aware that this would deprive investors of their funds.

[243] This is evident from Campbell's responses in his compelled examination with Staff that took place on December 10, 2007. During this examination Campbell's answers were mostly deliberately unhelpful, confusing or completely lacking in any business or common sense; however Campbell did make a number of admissions about his conduct and the investment scheme.

[244] For example, in his compelled testimony, Campbell admitted that he provided lists of potential investors to Al-tar, he knew that investors would be solicited in some way by Al-tar and he was paid for providing the list of investor names:

Q. Okay so you would have to call these people up and ask them to invest in Al-tar?

A. There's a number of ways to do it. I don't know how they [Al-tar] were going to do it.

Q. But he was willing to buy the list from you.

A. Yes.

Q. Okay. So we need an understanding of how much that was, to buy that list.

A. I don't remember.

Q. Was it $100,000?

A. I'm pretty sure it was a lot more than that.

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 66 line 24 to p. 67 line 11)

Q. And so you don't have any idea as to where the monies came from for Al-tar?

A. No.

Q. But they raised it from people. Do you have that understanding?

A. You are assuming that. I don't know where.

…

A. No. I mean, if he is getting a list, I'm pretty sure somebody or they are hiring somebody or he hired somebody to help raise capital. …

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 70 line 21 to p. 71 line 9)

Q. …I'm saying you understood that what they were going to use these lists for was to contact investors; is that accurate?

A. Yes.

Q. And as a result of that, you also played a role in setting up post office boxes for them and finding them places to work and places to do their business, whatever that business was, and sold them the lists to start with on a continuing basis and also even had your friend set up a company for them that would presumable conceal who in fact was really behind the company, doesn't it, and had him open up a bank account as well?

A. Okay.

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 226 line 19 to p. 227 line 7)

[245] Therefore Campbell knew that by providing services such as providing investor lists and setting up the infrastructure and offices for the Corporate Respondents, investors would be solicited for funds and his conduct made it possible to carry out the investment scheme.

[246] In fact Campbell also admitted that he had control over the investor funds at a certain time. When questioned about Alberta Energy's bank account, Campbell gave the following answers:

> Q. Who has control over the money?
>
> A. I did at one time and I think Eric did.
>
> Q. You did at one time.
>
> A. Which companies, I don't remember. I don't know if it was that one, if I had it or if Eric has it. Basically, what Julian did was just sign the cheques and leave them blank, yes.
>
> Q. So money that moved through this account, into and out of, you at a certain point in time had control over it.
>
> A. I don't know if it was for that company [Alberta Energy]. It could have been Drago.
>
> Q. It could have been Drago?
>
> A. Yes.
>
> (Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 116 lines 6-19)

[247] Campbell also acknowledged that he wrote Al-tar cheques to himself:

> Q. So given that, sir, are you now willing to acknowledge that you filled out this Al-Tar Energy cheque payable to yourself?
>
> A. It's possible. Yes.
>
> Q. … I guess by saying it's possible, you are acknowledging that you were that closely involved with Al-Tar, that you could write your own cheques -
>
> A. Yeah. I meet him at, like a donut shop and filled it out. That's about it.
>
> (Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 136 line 17 to p. 137 line 1)
>
> Q. Did you receive that cheque?
>
> A. I'm sure I did.

Q. Well, it's payable to your company.

A. Yeah.

Q. Did you write that cheque?

A. Possibly, yes.

…

Q. And you think you possibly wrote it.

A. Okay, I did.

Q. Who else would have written it?

A. All right. I did.

Q. You did write it.

A. Yes.

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 169 line 18 to p. 170 line 7)

[248] We also find that Campbell knew that the Corporate Respondents were not engaged in any legitimate business activities.

[249] Campbell admitted in his compelled testimony that although he was involved with the Corporate Respondents, he did not have any experience working with oil companies.

[250] In his compelled examination, Campbell stated that he did not know what the Corporate Respondents were doing. In our view this is a lie. Later on in that same compelled examination Campbell admitted that he knew that the activities of Al-tar, Alberta Energy and Drago were linked, however he gave evasive answers when Staff questioned him about the companies' specific activities:

Q. So Drago was supposed to be Alberta Energy and Al-Tar? They are all supposed to be one and the same?

A. Yes.

Q. All the same. Raising money for these three companies were all one and the same purpose.

A. To do the deal with the company in Alberta.

Q. To do the deal with the company in Alberta. But you can't tell me the name of the company in Alberta?

A. No, I don't remember the name. …

(Transcript, Examination of Dave Campbell, dated December 10, 2007, at p. 116 line 25 to p. 117 line 11)

[251] As a result of Campbell's conduct and role in the investment scheme, Campbell (through his company Canadian Oil Riggers) received a total of $217,195.93 of investor funds from the Corporate Respondents. This amount is broken down as follows:

- With respect to Al-tar investor funds, Campbell received $174,320.93 from Al-tar (as seen from the flow of funds chart in paragraph 76)

- With respect to Alberta Energy investor funds, Campbell, received $33,909.50 from Alberta Energy.

- With respect to Drago investor funds, Campbell received $8,925.00 from Drago.

[252] These fraudulent acts caused deprivation to investors. We note that these investors lost their funds and were not paid back.

[253] We conclude that Campbell perpetrated a fraud and breached section 126.1(b) of the Act.

Da Silva

[254] We find that Da Silva engaged in acts of deceit, falsehoods and other fraudulent means that deprived Al-tar investors of their funds.

[255] As set out in paragraph 106, Da Silva played an integral role soliciting Al-tar investors. As part of the scheme to solicit investors, Da Silva used an alias Daniels (as described in paragraph 68). He deceived investors about his identity when communicating with them. The evidence in this matter shows that individuals actually invested in Al-tar after having discussions with Da Silva (while he used the alias Daniels).

[256] In his compelled examination, Da Silva explained that he had a contract between Al-tar and his company Premium Resources indicating that as principal of Premium Resource he was to provide services for Al-tar. As compensation, Da Silva was to receive a flat fee of $500,000 – regardless of whether the work was completed or not. According to Da Silva, he was supposed to do internet research on mergers and acquisitions in the oil and gas industry and provide reports to O'Brien. However, when Staff requested these reports, invoices or any materials in support of this work, Da Silva was unable to

provide any documentation. As stated above at paragraph 106, we do not accept that Da Silva provided marketing services or other services related to a contract with Al-tar. We find that he was paid to solicit investor funds and was part of the investment scheme.

[257] We also find that Da Silva, who played the role of an Al-tar sales representative, had full knowledge about Al-tar's conduct and he raised funds from investors when there was no legitimate business underlying Al-tar. He was fully aware that this would deprive investors of their funds.

[258] Da Silva stated in his compelled examination that he was contracted by Al-tar to acquire land leases, find partnership deals with anybody who had land leases, research drilling capabilities, and deal with the oil and gas industry. However, Da Silva also stated that he did not keep any business records for his company. Da Silva also admitted that he was not familiar with this process and had never been involved in the oil and gas industry. We agree with Staff's submission, that Da Silva's actions defy common business sense. If this was a legitimate consulting business that Da Silva was running, then he would have had records and sample reports and other clients. In our view, based on the evidence, Da Silva was not engaged in legitimate consulting for Al-tar, rather he had a role in the investment scheme and received investor funds.

[259] Da Silva also knew that Al-tar's principal, O'Brien, was soliciting funds from investors and he knew that these funds were being used to pay him:

> I asked him [O'Brien] specifically where did this money come from, and he told me in no uncertain terms that he was raising capital through selling units or shares … My concern was getting paid for my services. That's all I know.
>
> (Transcript, Examination of Abel Da Silva, dated November 21, 2007, at p. 54 line 24 to p. 55 line 10)

[260] We note that at a later date, Da Silva lied in his affidavit, dated December 18, 2007, and contradicted the statement he made in his compelled testimony about the source of funds he was paid with. Da Silva's affidavit stated at paragraph 20 that:

> I have no direct knowledge of the original source of the funds that were paid to me by Al-Tar. I know nothing about the finances of Al-Tar or the manner in which it was capitlaized. …

[261] Da Silva's statement in his compelled examination is consistent with the overwhelming evidence of his involvement in the scheme.

[262] He also knew or ought to have known that Al-tar's activities stated in Al-tar press releases were false. These press releases discussed Al-tar's business deals and acquisitions, something that Da Silva was supposed to have arranged for Al-tar according

to the purported contract between him and Al-tar. However, Da Silva denied knowledge of Al-tar's purported activities discussed in the press releases.

[263] As a result of his conduct and role in the investment scheme, Da Silva received $207,030 of Al-tar investor funds which were paid to his company Premium Resource. As discussed above at paragraph 106 we found that these funds were paid to Da Silva to compensate him for soliciting investor funds.

[264] These fraudulent acts caused deprivation to investors. We note that these investors lost their funds and were not paid back.

[265] We conclude that Da Silva perpetrated a fraud and breached section 126.1(b) of the Act.

Sylvester

[266] We find that Sylvester engaged in acts of deceit, falsehoods and other fraudulent means that deprived Alberta Energy and Drago investors of their funds.

[267] Sylvester, the sole director of Alberta Energy, stated that he was unfamiliar with the company Alberta Energy; however at a later point in his compelled examination he admitted that he was listed as President and CEO of Alberta Energy since its inception and that he registered the company.

[268] When Sylvester, the sole director of Drago, opened the Drago bank account accompanied by Campbell, the bank was told that that the company was engaged in field research and consulting and mineral mining. This was untrue.

[269] Sylvester's name was also listed on the Alberta Energy website, which contained false information and information copied from the Al-tar website. Specifically, the Alberta Energy website stated that:

> Mr. Sylvester has been President & Chief Executive Officer of Alberta Energy Corp. since it's inception. He has been a senior executive officer of Embridge [sic] for over 7 years and is a director of a number of Embridge subsidiaries. He is a member of the North American Review Board of Peak Oil Holdings, Inc. (world leader in the study of peak oil theories) and is also a member of the board of the Coal Alliance Group, (global management consulting, technology services and outsourcing company).

[270] This description of Sylvester's experience as a senior executive was completely fabricated and false.

[271] We also find that Sylvester, as the sole director of Alberta Energy and Drago, had full knowledge of the conduct of these companies and he had knowledge that this conduct would deprive investors of their funds.

[272] We note that as discussed at paragraph 110, Sylvester was also the President of OSG Capital, which was a company that was related to this whole investment scheme but not a respondent in this proceeding.

[273] In his compelled examination, Sylvester admitted he was aware fraudulent conduct was taking place. Specifically:

- Sylvester admitted that he did not know anything about mineral mining. He also admitted that he did not know what Alberta Energy and Drago were being used for, although he was the sole director of both companies. However, when opening bank accounts with Campbell, Sylvester did not question or verify the business activities of Alberta Energy or Drago and he allowed for false information about the companies to be used to open bank accounts, which was an integral part of the investment scheme.

- Sylvester also admitted that the content of Alberta Energy's website was false.

[274] Sylvester also explained in his compelled testimony that the reason he got involved with Campbell and the investment scheme is because he wanted to make money:

> [Campbell's] going to show me how to make some money … it was going to be simple and he was going to teach me how to do it. It looked like he was making money. I was like, hey, no problem. We went and set up a bank account …
>
> (Transcript, Examination of Julian Sylvester dated May 2, 2008, at p. 17 lines 1-5)

[275] As a result of Sylvester's conduct and role in the investment scheme, $9,000 of Drago investor funds were paid into the Drago bank account which Sylvester was the sole signatory.

[276] We find that Sylvester engaged in acts of deceit, falsehoods and other fraudulent means with respect to Alberta Energy and Drago for the sole purpose of raising funds from investors when he knew there was no legitimate business aspect to Alberta Energy or Drago.

[277] These fraudulent acts caused deprivation to investors. We note that these investors lost their funds and were not paid back.

[278] We conclude that Sylvester perpetrated a fraud and breached section 126.1(b) of the Act.

Al-tar

[279] We find that Al-tar engaged in many acts of deceit, falsehoods and other fraudulent means that deprived investors of their funds.

[280] First of all, Al-tar's website contained false information about the company. It stated that:

- Al-tar "is a growing independent energy company based in Toronto, Ontario, engaged in oil and gas lease acquisitions, exploration and development".

- "The Company will specialize in acquiring oil and gas leases that have potential for increased oil and natural gas production utilizing new technologies".

- Al-tar "will acquire oil and gas leases that have proven reserves".

- Al-tar "focuses on premium oil and gas properties in both the royalty sector as well as non-operated cash flow wells".

- Al-tar "is poised to expand globally at a rapid rate to create greater shareholder value".

[281] Al-tar also falsely stated on forms when opening bank accounts that it was involved with leasing land in the Alberta Oil sands, limestone extraction from oil slag and investor transactions.

[282] In addition, Al-tar's Executive Summary, which was signed by O'Brien, provided false information about the company to give investors the impression that Al-tar was a legitimate business. The content of the Executive Summary is addressed above at paragraph 223.

[283] Furthermore, as discussed at paragraph 225, Al-tar issued press releases that contained false and fabricated information about Al-tar's business activities and transactions.

[284] When Al-tar's structure and activities are looked at as a whole, we find that the following facts are also indicators that Al-tar had no legitimate business purpose and the company was fraudulent:

- Al-tar representatives used aliases when dealing with investors.

- The two Al-tar bank accounts were only open for a short period of time, six and eight months respectively.

- The address of a post office box was listed as an office location.

- Investor funds were deposited in the two Al-tar bank accounts and immediately transferred to other accounts controlled by some of the respondents or related individuals and entities.

- Investor funds were used for personal expenditures.

- Calls to investors were made from various locations, but investors were only provided a mailbox address as the company's location.

- Investors were subjected to repeated calls prior to agreeing to invest.

- The share price for Al-tar shares varied with no apparent basis for valuation.

- Al-tar had no board of directors, no operating assets or infrastructure, no experienced management and we were not provided with any evidence of legitimate books and records kept by the company.

[285] All of the statements about Al-tar's activities are completely false. We find that Al-tar did not engage in any legitimate business in any industry. Staff's investigation in this matter did not locate any assets, operations or legitimate business expenses. Al-tar was only involved in raising funds fraudulently from investors.

[286] For a corporate respondent it is sufficient to show that its directing minds knew or reasonably ought to have known that the acts of the corporation perpetrated a fraud to prove a breach of section 126.1(b).

[287] O'Brien was the directing mind and sole director of Al-tar. He had full knowledge of the fraudulent conduct which took place and deprived investors of their funds. As set out in paragraphs 230 to 232, O'Brien had no experience in the oil and gas industry and he knew the information contained in Al-tar's press releases and website was false. O'Brien, Al-tar's President, CEO and sole director knew that Al-tar was not engaged in any legitimate activities in any industry.

[288] Investors relied on the false and fabricated information about Al-tar and its business activities when deciding whether to invest in the company. Therefore, these fraudulent acts caused deprivation to investors. Through the investment scheme Al-tar raised a total of $615,199.50 from investors. We note that these investors lost their funds and were not paid back.

[289] We conclude that Al-tar perpetrated a fraud and breached section 126.1(b) of the Act.

Alberta Energy

[290] We find that Alberta Energy engaged in acts of deceit, falsehoods and other fraudulent means that deprived investors of their funds.

[291] Al-tar's website contained false information about the company and this was addressed at paragraph 119. The Alberta Energy website was almost identical to the Al-tar website and included the identical toll free phone number and the same spelling mistakes. The only difference was that the Alberta Energy website had a different company name, board of directors and address.

[292] As discussed at paragraph 119, Alberta Energy issued a press release dated February 7, 2007 that contained false and fabricated information about Alberta Energy's business activities and transactions.

[293] Similar to Al-tar, Alberta Energy did not have any legitimate business activity other than soliciting funds from investors. It also had a virtual office. In addition, Alberta Energy sales persons used aliases when contacting investors and investors were not aware of who they were really talking to or corresponding with. These are all indicia of a fraudulent investment scheme.

[294] For a corporate respondent it is sufficient to show that its directing minds knew or reasonably ought to have known that the acts of the corporation perpetrated a fraud to prove a breach of section 126.1(b).

[295] Sylvester was the directing mind and sole director of Alberta Energy. He had full knowledge of the fraudulent conduct which took place and that it deprived investors of their funds. Sylvester, the sole director of Alberta Energy, had no experience in the mining and/or oil and gas industries and he claimed to not know what Alberta Energy did, contrary to what was stated in corporate documents sent to investors. Alberta Energy was not engaged in any legitimate activities. As CEO and sole director of Alberta Energy, Sylvester knew or ought to have known of Alberta Energy's activities, that its website contained false information and that information in Alberta Energy's press releases was untrue.

[296] Investors relied on the false information about Alberta Energy and its business activities when deciding whether to invest in the company. Therefore, these fraudulent acts caused deprivation to investors. Through the investment scheme Alberta Energy raised a total of $33,909.53 from investors. We note that these investors lost their funds and were not paid back.

[297] As a result, we find that Alberta Energy perpetrated a fraud and breached section 126.1(b) of the Act.

Drago

[298] We find that Drago engaged in acts of deceit, falsehoods and other fraudulent means that deprived investors of their funds.

[299] Drago's website contained false information about the company. We note that material on the Drago website was copied from the website of another company, Geoandine Mining Corp.

[300] Drago's website also referred to the Arkaroola Copper-Gold-Uranium Project ("Arkaroola Project") in South Australia. Alliance Resources, a publicly traded company on the Australian Exchange, operates the Arkaroola Project and confirmed through correspondence that the claims on the Drago website in relation to the Arkaroola Project are false.

[301] Investors were also referred to the Drago website. The website contained false promotional information about the company to give investors the impression that it would be a good investment.

[302] In addition, Drago issued a press release containing false and misleading information. This press release, dated April 15, 2007, stated that Drago "…signed an engagement letter for a proposed private placement on a firm underwriting basis of 10 Million units at a price of $1.50 per unit, for gross proceeds to Drago of $15,000,000." Sylvester confirmed in his compelled examination that this press release was not true.

[303] Similar to Al-tar and Alberta Energy, Drago did not have any legitimate business activity other than soliciting funds from investors. It also had a virtual office.

[304] For a corporate respondent it is sufficient to show that its directing minds knew or reasonably ought to have known that the acts of the corporation perpetrated a fraud to prove a breach of section 126.1(b).

[305] Sylvester was the directing mind and sole director of Drago. He had full knowledge of the fraudulent conduct which took place and that it deprived investors of their funds. Drago was not engaged in any legitimate activities. Sylvester, as CEO and sole director of Drago, knew or ought to have known of Drago's activities, that its website contained false information and that information in Drago's press releases was untrue.

[306] Through the investment scheme Drago raised a total of $9,000 from investors. We note that these investors lost their funds and were not paid back.

[307] We conclude that Drago perpetrated a fraud and breached section 126.1(b) of the Act.

iii. Findings

[308] In our view the investment scheme involving Al-tar, Alberta Energy and Drago was fraudulent. The Corporate Respondents did not engage in any legitimate business activities as purported in their promotional materials, press releases and websites. None of the Corporate Respondents engaged in any activity other than soliciting funds from investors. There were no assets relating to any legitimate business activity at all with respect to any of the Corporate Respondents.

[309] The Individual Respondents involved in the scheme had no experience in the oil and gas or mining industries, which were the industries the Corporate Respondents were purportedly involved in.

[310] The Corporate Respondents all operated out of virtual offices. The Corporate Respondents had websites which contained false information which were used to entice investors to invest.

[311] Investors were referred to the Al-tar, Alberta Energy and Drago websites and were provided with the Executive Summaries and press releases, all of which contained false information about the Corporate Respondents in order to entice them to invest or reinvest. This false information mislead investors as to what they were really investing in.

[312] Members of the public were cold-called on a repeated basis by sales representatives (some of whom used aliases) using high pressure sales tactics to persuade individuals to invest.

[313] Once funds were received from investors by the Corporate Respondents, these funds were immediately transferred to bank accounts controlled by the Individual Respondents and others. These funds were used to pay personal expenses and none of the funds were spent on any legitimate business purpose.

[314] Once investors invested, they had a difficult time reaching contact persons at the Corporate Respondents to verify the status of their investment.

[315] The investment scheme that the Corporate Respondents were involved in was of a rolling nature. The activities surrounding each of the Corporate Respondents was short lived, once one company was being wound up (i.e. Al-tar), another was getting off the ground (i.e. Alberta Energy and/or Drago). In our view, this conduct was designed so that the Respondents would avoid detection.

[316] In our view, the overlapping character of the investment scheme, the fleeting nature of the operations and the brief window of opportunity that the Respondents used to exploit and sell shares to the unsuspecting public underscores the fraudulent conduct in this case.

[317] We find that the Corporate Respondents were solely created to defraud investors and engaged in fraudulent activity. We also find that the Individual Respondents were aware of this for the most part, or they ought to have been aware given the nature of their role as integral players in this fraudulent investment scheme. They were also aware of the scale and magnitude of the impact on investors.

[318] The Respondents were perpetrating a fraud on investors across Canada and the U.K. A total of $658,109.63 was raised from the sale of shares of Al-tar, Alberta Energy and Drago. We note that these investor lost all their funds and were not paid back.

[319] We conclude that the Respondents all breached section 126.1(b) of the Act.

H. Was O'Brien Responsible for the Breaches by Al-tar and was Sylvester Responsible for the Breaches by Alberta Energy and Drago, Pursuant to Section 129.2 of the Act?

i. The Applicable Law

[320] According to section 129.2 of the Act, a director or officer is deemed to be liable for a breach of securities law by the issuer where the director or officer authorized, permitted or acquiesced in the issuer's non-compliance with the Act. Specifically, section 129.2 states:

> 129.2 For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[321] Basically, the director or officer is also held responsible as the directing mind behind the company's actions.

[322] In subsection 1(1) of the Act, a "director" is defined as "a director of a company or an individual performing a similar function or occupying a similar position for any person" and an "officer" is defined as:

> (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
>
> (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and
>
> (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b).

[323] The language of section 129.2 also uses the terms "authorize", "permit" and "acquiesce". "Acquiesce" means to agree or consent quietly without protest. "Authorize" means to give official approval or permission, to give power or authority or to give justification. "Permit" means to allow, consent, tolerate, give permission or authorize permission particularly in writing.

ii. Analysis

O'Brien

[324] O'Brien is the sole director of Al-tar. This is stated on Al-tar's Corporation Profile Report.

[325] O'Brien's conduct as set out in paragraph 91 also shows that he was the directing mind behind Al-tar, and that he permitted, authorized or acquiesced to the conduct engaged in by Al-tar. To summarize, O'Brien:

- incorporated Al-tar;
- set up the infrastructure for Al-tar. For example, O'Brien set up Al-tar's offices, opened the Al-tar bank accounts as sole signatory, opened the Al-tar mailbox at Apple Self Storage, opened the Puralator account and contracted for phone/fax and answering services for Al-tar…etc.;
- transferred investor funds/wrote cheques from the Al-tar bank accounts to himself, Sterling Services, Premium Resource and Canadian Oil Riggers;
- in his capacity as President and CEO of Al-tar, he signed Al-tar correspondence, share certificates, emails, an Executive Summary and press releases that were sent to investors and potential investors;
- spoke to a number of investors regarding Al-tar's prospects; and
- received $147,791.50 of Al-tar investor funds.

[326] It is clear that O'Brien not only permitted Al-tar's conduct, but O'Brien also acted on behalf of Al-tar, executed Al-tar's investment scheme and made Al-tar's conduct possible by organizing and setting up the whole company and receiving investor funds.

[327] O'Brien was the directing mind behind all of Al-tar's actions in this investment scheme, and as the sole director, O'Brien was ultimately responsible for the conduct of Al-tar. Pursuant to section 129.2 of the Act, O'Brien is liable for Al-tar's breaches of the Act.

Sylvester

[328] Sylvester is the sole director of Alberta Energy. This is stated on Alberta Energy's Corporation Profile Report.

[329] Sylvester's conduct as set out in paragraph 110 also shows that he was the directing mind behind Alberta Energy. To summarize, Sylvester:

- was listed as a director on the Alberta Energy website, which was designed to excite readers about Alberta Energy's prospects;

- was listed on the Alberta Energy Executive Summary as President and CEO;

- set up the Alberta Energy bank account and was the sole signatory; and

- signed blank cheques for the Alberta Energy bank account.

[330] In addition, Sylvester is the sole director of Drago. This is stated on Drago's Corporation Profile Report. As a sole director, Sylvester was ultimately responsible for the conduct of Drago.

[331] Sylvester's conduct as set out in paragraph 112 also shows that he was the directing mind behind Drago. To summarize, Sylvester:

- set up the Drago bank account into which investor funds were deposited and he was the sole signatory of that account; and

- signed blank cheques for the Drago bank account.

[332] We find that Sylvester was the directing mind behind Alberta Energy and Drago, and as the sole director of these companies, he permitted their conduct. Pursuant to section 129.2 of the Act, Sylvester is liable for Alberta Energy and Drago's breaches of the Act.

iii. Findings

[333] Accordingly, we conclude that O'Brien authorized, permitted or acquiesced in Al-tar's contraventions of the Act and he is responsible for Al-tar's conduct in this matter pursuant to section 129.2 of the Act.

[334] We also conclude that Sylvester authorized, permitted or acquiesced in Alberta Energy and Drago's contraventions of the Act and he is responsible for Alberta Energy and Drago's conduct in this matter pursuant to section 129.2 of the Act.

I. Was the Conduct of the Respondents Contrary to the Public Interest?

i. The Applicable Law

[335] As set out in section 1.1 of the Act, it is the Commission's mandate to:

> (a) provide protection to investors from unfair, improper or fraudulent practices; and

(b) foster fair and efficient capital markets and confidence in those capital markets.

[336] In pursuing the purposes of the Act, the Commission must consider fundamental principles as stated in section 2.1 of the Act. The relevant parts of section 2.1 of the Act are as follows:

i. requirements for timely, accurate and efficient disclosure of information;

ii. restrictions on fraudulent and unfair market practices and procedures; and

iii. requirements for the maintenance of high standards of fairness and business conduct to ensure honest and responsible conduct by market participants.

[337] Staff alleges that the conduct of the Respondents is contrary to the public interest.

ii. Analysis

[338] All of the Respondents breached a number of key provisions, trading without registration (subsection 25(1)(a)) and engaging in a distribution without satisfying the distribution requirements under the Act (subsection 53(1)), which are intended to protect investors. All of the Respondents engaged in trades without proper registration. There was never any prospectus prepared for the issuance of the shares of the Corporate Respondents. We find that there were no exemptions available to any of the Respondents. It is contrary to the public interest because registration and distribution requirements are essential to protect investors and to ensure the integrity of the capital markets. Through this conduct, the Respondents failed to maintain high standards of fairness and business conduct.

[339] The investment scheme was characterized by high pressure sales tactics. In *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.
>
> (*First Global*, *supra* at para. 158)

[340] Just as in *First Global*, high pressure sales tactics were used in this case. Investors were called on a repeated basis (often by individuals using aliases) to invest in the Corporate Respondents. Comments regarding the future value of shares and that the Corporate Respondents would be going public in a short period of time were made to investors to entice them to invest or reinvest otherwise they would lose out on an opportunity. Investors testified that they were influenced by such statements when making their decision to invest in the Corporate Respondents. We find that these kinds of high pressure sales tactics are improper and unacceptable and contrary to the public interest.

[341] In addition, through their trading activities in relation to this investment scheme, Da Silva breached the Commission Order dated May 10, 2006 and Campbell breached the Commission Order dated April 13, 2006. Breaches of previous Commission orders are very serious as it shows a party's disregard for their obligations and responsibilities under Ontario securities law. This egregious conduct was also contrary to the public interest.

[342] All of the Respondents also engaged in fraud in breach of section 126.1(b) of the Act.

[343] The investment scheme as a whole was fraudulent. Virtual offices and mailboxes were used as the addresses of the Corporate Respondents to give the appearance that there was a legitimate address and location for the business. Aliases were used when investors were solicited.

[344] A review of the evidence in this matter reveals that the Corporate Respondents did not carry on any business other than raising funds from investors. Their promotional materials, websites and press releases contained false and misleading information about fictitious activities. The Corporate Respondents were purportedly involved in the oil and gas and mineral mining industries, however, the evidence revealed that none of them were involved in any legitimate business in any industry.

[345] The whole investment scheme involving the three Corporate Respondents raised $658,109.03. Once funds were raised from investors, the majority of these funds were deposited into the bank accounts of the Corporate Respondents and then immediately transferred to other accounts controlled by some of the respondents or related individuals and entities. The Individual Respondents used investor funds for personal use. The only business-related expenditures were to facilitate raising funds from investors.

[346] This matter dealt with egregious conduct involving significant contraventions of the Act including fraud. The fraudulent activities of the Respondents caused significant harm to investors and investors were deprived of their funds. Investors of Al-tar, Alberta Energy and Drago lost their entire investments totaling $658,109.03.

[347] In this matter the investment scheme and the conduct of the Respondents undermine the integrity of and confidence in the capital markets, and this is clearly contrary to the public interest.

iii. Findings

[348] We conclude that all of the Respondents engaged in conduct contrary to the public interest.

6. DECISION

[349] For the reasons stated above we find that:

(a) all the Respondents breached subsection 25(1)(a) of the Act;

(b) Da Silva breached the Commission Order dated May 10, 2006 and Campbell breached the Commission Order dated April 13, 2006;

(c) all the Respondents breached subsection 53(1) of the Act;

(d) there were no exemptions available to the Respondents;

(e) none of the Respondents breached subsection 38(2) of the Act;

(f) none of the Respondents breached subsection 38(3) of the Act;

(g) all the Respondents breached section 126.1(b) of the Act.

(h) pursuant to section 129.2 of the Act, O'Brien is liable for Al-tar's conduct and Sylvester is liable for Alberta Energy and Drago's conduct.

(i) all of the Respondents acted contrary to the public interest.

[350] 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 11th day of June, 2010.

"*Suresh Thakrar*"	"*Carol S. Perry*"
Suresh Thakrar	Carol S. Perry