



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF CHARTCANDLE INVESTMENTS CORPORATION, CCI
FINANCIAL, LLC, CHARTCANDLE INC., PSST GLOBAL CORPORATION,
STEPHEN MICHAEL CHESNOWITZ and CHARLES PAULY**

HEARING HELD PURSUANT TO SECTIONS 127 AND 127.1 OF THE ACT

REASONS AND DECISION FOR THE HEARING ON THE MERITS

HEARING: September 27, 2010

PANEL: James D. Carnwath - Commissioner and Chair of the Panel
Patrick J. Lesage - Commissioner

APPEARANCES: Sean Horgan - for Staff of the Ontario Securities Commission
Amanda Heydon

- No one appeared for any of the Respondents

ORAL RULING AND REASONS

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

Chair:

[1] First, we are satisfied that the requirements of service have been met. Second, the motion to proceed in writing has been granted. We are satisfied that the requirements of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 pursuant to s. 7(1) have been met. We were further satisfied that we would hear the matter in writing having concluded that the requirements of s. 5.1 of the *Statutory Powers Procedure Act* have been met. We are further satisfied that we may receive and consider hearsay evidence pursuant to s. 15(1) of the *Statutory Powers Procedure Act*. The weight to be given is of course for the panel to consider. Mr. Chesnowitz has failed to attend and we may and we do take that as his waiver of any objection to the use of hearsay evidence.

[2] On the basis of Mr. Panchuk’s affidavit filed as Exhibit 1 and the attached exhibits entered as A, B, C and D, we find firstly the respondents were selling securities, contrary to s. 25(1)(a) of the *Securities Act*, R.S.O. c. S.5, as amended (the “*Act*”) and contrary to the public interest. They were not registered and no exemptions were available to them notwithstanding vague references by the respondents regarding the accredited investor status.

[3] We further find that Mr. Chesnowitz acted as an advisor with respect to investing in and buying and selling securities without registration in respect of which there was no exemption available contrary to s. 25(1)(c) of the *Act* and contrary to the public interest. We find further that the respondents directly or indirectly engaged or participated in acts, practices or course of conduct relating to the securities they knew or reasonably ought to have known would perpetrate a fraud on persons contrary to s. 126.1 of the *Act* and contrary to the public interest. We base that finding on our acceptance of staff’s submissions found at para. 109 of their submissions filed (Appendix “A” attached). We find it unnecessary to make a finding under s. 129.2 of the *Act* having regard to the facts, which make such a finding superfluous.

Approved by the Panel at this 14th day of October, 2010.

“James D. Carnwath”

James D. Carnwath

“Patrick J. LeSage”

Patrick J. Lesage

Appendix A

109. It is submitted that there is a body of compelling evidence in this case to establish that the Respondents engaged in an ongoing course of conduct that can only be described as deceit, falsehoods or other fraudulent means as follows:

(i) Type of Trading/Use of Investor Funds

- Chesnowitz caused the Chartcandle Brochure to be distributed to potential investors indicating that investor funds would be traded in equities, equity options, and foreign exchange;
- Chesnowitz caused the PPM to be distributed to potential investors indicating that investor funds would be traded in equity securities, stocks, bonds, debentures, notes, options, American Depository Receipts, warrants and futures contracts; and
- When each of the Chartcandle Brochure and the PPM are read as a whole, an investor would have been left with the impression that all funds in the Chartcandle Fund would be traded in equities of one form or another. Nowhere in either of these documents does it state that investor funds would be used for personal expenses, or for purchasing assets such as cars, trucks, jet skis, snowmobiles and a residential property.

(ii) Chesnowitz Background and Training

- The Chartcandle Brochure stated that Chesnowitz had been mentored by MacKinnon, a prominent trader, and had developed a trading system that produced consistent returns over long periods;
- MacKinnon had never traded in securities and never mentored Chesnowitz;

- Chesnowitz had not developed a trading system that produced consistent returns, in fact he admitted that at certain points in time, he was trading with no strategy;
- Other similar misleading information regarding Chesnowitz's background and false trading results for the Chartcandle Fund were posted on the internet, including a statement that Chesnowitz created a hedge fund in 2003 that achieved greater than 20% annual returns for its investors. Chesnowitz admitted that those facts were false since the Chartcandle Fund started in 2005 and there were no trading results for 2003 or 2004; and
- Although Chesnowitz purported not to know how some of this information came to be posted on the internet, Staff submit that there is a strong inference to be drawn that Chesnowitz caused that information to be publicly available on the internet to assist in soliciting potential investors.

(iii) Misappropriating Investor Funds

- Chesnowitz directly or indirectly caused the acquisition of at least five (5) vehicles with investor funds totalling approximately \$205,000;
- Chesnowitz directly or indirectly caused the acquisition of a trailer with investor funds valued at approximately \$70,000;
- Chesnowitz directly or indirectly caused the acquisition of a jet ski and a snowmobile with investor funds that were not used for business purposes;
- Chesnowitz directly or indirectly caused mortgage payments to be made with investor funds towards a residential property in Mar, Ontario;

- Chesnowitz directly or indirectly caused payments to be made for personal or business expenses that were not authorized, including car insurance premiums, car parts, a truck driving course and a trip to the Cayman Islands; and
- Chesnowitz directly or indirectly caused payments to be made with investor funds to his own personal bank accounts.

(iv) Misleading Investors Regarding Trading Results

- Chesnowitz directed the creation of the Website;
- Chesnowitz directed Pauly to maintain the Website as the sole means of reporting to Chartcandle Fund investors. Despite significant trading losses, Chesnowitz directed Pauly to post false returns on the Website that did not reflect actual trading results; and
- Based on the false postings on the Website, investors believed their funds were safe and that they were earning the returns that were posted.

(v) Using Investor Funds to Pay Returns and Redemptions to Other Investors

- Chesnowitz, directly or indirectly provided some investors with purported monthly returns on their investment using capital from other investors;
- During the period from August 2005 to January 2006, the Chartcandle Fund did not make any trading profits, nonetheless some investors received purported returns and redemptions during this period; and
- Chesnowitz used funds from one investor to satisfy a redemption request from another investor.