



Ontario
Securities
Commission

Commission des
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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
GOLD-QUEST INTERNATIONAL, 1725587 ONTARIO INC. carrying on business
as HEALTH AND HARMONEY, HARMONEY CLUB INC., DONALD IAIN
BUCHANAN, LISA BUCHANAN and SANDRA GALE**

**REASONS AND DECISION CONCERNING
DONALD IAIN BUCHANAN and LISA BUCHANAN
(Sections 127 and 127.1 of the Act)**

Hearing: April 28, 2010 and
September 3, 2010

Decision: November 26, 2010

Panel: James E. A. Turner - Vice-Chair and Chair of the Panel
Carol S. Perry - Commissioner
Sinan O. Akdeniz - Commissioner

Appearances: Hugh Craig - For Staff of the Commission
Alistair Crawley - For Donald and Lisa Buchanan

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**REASONS AND DECISION CONCERNING
DONALD IAIN BUCHANAN and LISA BUCHANAN**

I. OVERVIEW

A. Background

[1] This is the decision of the Ontario Securities Commission (the “**Commission**”) pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the “**Act**”) in connection with a Notice of Hearing dated March 13, 2009 and a Statement of Allegations (the “**Statement of Allegations**”) filed by Staff of the Commission (“**Staff**”) on March 12, 2009 against the respondents Gold-Quest International (“**Gold-Quest**”), 1725587 Ontario Inc. carrying on business as Health and Harmony (“**Health and Harmony**”), Harmony Club Inc. (“**Harmony Club**”), Donald Iain Buchanan (“**Buchanan**”), Lisa Buchanan and Sandra Gale (“**Gale**”).

[2] On April 28, 2010, Staff and counsel for the respondents Buchanan and Lisa Buchanan (collectively, the “**Buchanans**”) appeared before the Commission and submitted an Agreed Statement of Facts on behalf of each of Buchanan and Lisa Buchanan. Staff and the Buchanans requested that the Panel make findings based on the Agreed Statements of Fact, and made submissions with respect to the sanctions that may be ordered.

[3] Subsequent to the April 28, 2010 hearing, the Panel invited Staff and the Buchanans to provide additional evidence and submissions concerning the possibility that a sanctions order by the Panel could exceed the sanctions requested by Staff at the April 28, 2010 hearing. The Panel posed six specific questions (referred to in paragraph 64 of these reasons) for consideration by Staff and the Buchanans (the “**Questions from the Panel**”).

[4] On September 3, 2010, Staff and counsel for the Buchanans appeared and made oral submissions with respect to the Questions from the Panel.

[5] This decision relates to the conduct of the Buchanans only. The allegations against the remaining respondents, Gold-Quest, Health and Harmony, Harmony Club and Gale, remain outstanding.

B. Donald and Lisa Buchanan

[6] Buchanan and Lisa Buchanan are married to each other and reside in Oshawa, Ontario.

[7] During the relevant time, Buchanan was a director of Health and Harmony and the Harmony Club. He has acknowledged that he was a directing mind of each of Health and Harmony and the Harmony Club.

[8] Lisa Buchanan was an employee of Health and Harmony. She was also a director of Harmony Club. Both Buchanan and Lisa Buchanan indicate in the Agreed Statements of Fact that Lisa Buchanan was not an active directing mind of Harmony Club.

[9] Health and Harmony was incorporated in Ontario on September 20, 2007. Prior to that, it operated as general partnership. Harmony Club was incorporated as a Canadian corporation on December 21, 2007. Both Health and Harmony and Harmony Club carried on business in Oshawa, Ontario from the same premises.

C. The Allegations

[10] Staff made the following allegations against Buchanan and Lisa Buchanan in the Statement of Allegations:

- (a) with respect to trading in securities of Gold-Quest, the conduct of Buchanan was contrary to the public interest and constituted the following breaches of the Act:
 - (i) trading without registration contrary to section 25 of the Act;
 - (ii) an illegal distribution of securities contrary to section 53 of the Act; and
 - (iii) as a director of Health and Harmony, directing, permitting or acquiescing in breaches of sections 25 and 53 of the Act by Health and Harmony contrary to section 129.2 of the Act;
- (b) with respect to trading in securities of Harmony Club, the conduct of Buchanan was contrary to the public interest and constituted the following breaches of the Act:
 - (i) trading without registration contrary to section 25 of the Act;
 - (ii) an illegal distribution of securities contrary to section 53 of the Act;
 - (iii) as a director of Harmony Club, directing, permitting or acquiescing in breaches of sections 25 and 53 of the Act by the Harmony Club contrary to section 129.2 of the Act; and
 - (iv) trading in securities while prohibited from doing so by a temporary cease trade order issued by the Commission on April 1, 2008 (the “**Temporary Order**”), contrary to section 122 of the Act;
- (c) with respect to trading in securities of Gold-Quest, the conduct of Lisa Buchanan was contrary to the public interest and constituted the following breaches of the Act:
 - (i) trading without registration contrary to section 25 of the Act;
 - (ii) an illegal distribution of securities contrary to section 53 of the Act; and
- (d) with respect to trading in securities of Harmony Club, the conduct of Lisa Buchanan was contrary to the public interest and constituted the following breaches of the Act:
 - (i) trading without registration contrary to section 25 of the Act;

- (ii) an illegal distribution of securities contrary to section 53 of the Act;
- (iii) as a director of Harmony Club, directing, permitting or acquiescing in breaches of sections 25 and 53 of the Act by Harmony Club, contrary to section 129.2 of the Act; and
- (iv) trading in securities while prohibited from doing so by the Temporary Order, contrary to section 122 of the Act.

II. ISSUES

[11] The issues that we must decide are:

- (a) Did Buchanan breach the Act and was his conduct contrary to the public interest, as stated in his Agreed Statement of Facts?
- (b) Was Lisa Buchanan's conduct contrary to the public interest, as stated in her Agreed Statement of Facts?
- (c) Does the fact that Buchanan is an undischarged bankrupt impair our ability to order administrative penalties or disgorgement against him?
- (d) Can we order that Buchanan pay a higher administrative penalty than that requested by Staff?
- (e) What sanctions, if any, should be ordered with respect to each of Buchanan and Lisa Buchanan in the public interest?

III. FINDINGS WITH RESPECT TO THE ALLEGATIONS

A. The Agreed Statements of Fact

[12] An Agreed Statement of Facts was filed for each of Buchanan and Lisa Buchanan. The two Agreed Statements of Fact are attached to these reasons as Schedule "A" and Schedule "B", respectively. No other evidence was presented by Staff or by the Buchanans with respect to the allegations brought by Staff. Our findings on the merits are based solely on the Agreed Statements of Fact and on the oral submissions made by Staff and counsel for the Buchanans at the hearing.

(a) Trading in Gold-Quest Securities

[13] From June 2006 to May 2008, Gold-Quest, a Panamanian company controlled by individuals resident in the United States, obtained approximately US \$29 million from investors through direct solicitations, a website and by referrals from existing investors. Those investors included investors in Ontario.

[14] When a new investor invested in Gold-Quest, 88% of that investor's funds would be earmarked for commissions payable to the individual who introduced the investor to Gold-Quest

(the “**Administrative Manager**”), the individual who introduced the Administrative Manager to Gold-Quest (the “**Managing Director**”) and the individual who introduced the Managing Director to Gold-Quest. From June 2006 to May 2008, Gold-Quest disbursed US \$20.3 million through distributions to investors and payment of commissions.

[15] From November 2006 to February 2008 (the “**Relevant Time**”), Health and Harmony, the Buchanans and other employees, representatives and agents of Health and Harmony, promoted the distribution of Gold-Quest securities to Ontario residents. Buchanan was a directing mind of Health and Harmony.

[16] During the Relevant Time, Ontario investors sent over US \$1.8 million to Gold-Quest as a result of promotional and trading activities by Health and Harmony and its employees, representatives and agents. Ontario investors were recommended Gold-Quest as an investment and were provided specific information regarding the nature of the investment with Gold-Quest and, in some cases, the transfer of funds from the Ontario investors to Gold-Quest was facilitated by Health and Harmony.

[17] The Ontario investors entered into one-year investment contracts with Gold-Quest for investment in the foreign exchange market for an annual return equal to 87.5%. The Buchanans were aware of the terms of these investment contracts and the Gold-Quest commission structure referred to in paragraph 14 of these reasons, but did not inform the Ontario investors of the commission structure.

[18] As a result of its role in the trading of securities in Gold-Quest, Health and Harmony received US \$1,024,506.87 in compensation.

[19] Gold-Quest has ceased operations by order of the United States District Court. As of December 12, 2008, a receiver appointed by the United States District Court had recovered only US \$273,475.85.

[20] Gold-Quest has never been registered in any capacity with the Commission and no preliminary prospectus or prospectus has ever been filed with the Commission for trading in Gold-Quest securities.

[21] Throughout the Relevant Time, neither Buchanan nor Lisa Buchanan was registered in any capacity with the Commission.

[22] There were no exemptions available under the Act which allowed Health and Harmony or the Buchanans to trade Gold-Quest securities in Ontario.

(b) Trades in Harmony Club Securities

[23] Harmony Club was created by the Buchanans and Gale. Harmony Club issued its securities to approximately 138 Ontario investors (the “**Harmony Club Investors**”) from October 2007 to July 2008.

[24] Harmony Club received almost US \$2.5 million from the Harmony Club Investors. Those funds were used by Harmony Club for investments in the United States.

[25] No preliminary prospectus or prospectus has ever been filed with the Commission for trading in Harmony Club securities. No exemptions were available to Harmony Club, the Buchanans or Gale under the Act to allow them to trade in Harmony Club securities.

[26] On April 1, 2008, the Commission issued the Temporary Order prohibiting Health and Harmony, the Buchanans and others from trading in any securities and ordering that any exemptions contained in Ontario securities law do not apply to Health and Harmony, the Buchanans and others. Over half of the Harmony Club Investors purchased shares in Harmony Club from the Buchanans and Gale after the Temporary Order was issued.

(c) The Conduct of Buchanan

[27] As a result of its role in distributing securities in Gold-Quest, Health and Harmony received US \$1,024,506.87 in compensation. As a result of his role, Buchanan received US \$145,850.00 through an account controlled by him and US \$207,066.62 from an account controlled by Health and Harmony, for a total of US \$352,916.62.

[28] Buchanan admits in his Agreed Statement of Facts that his conduct with respect to trades in Gold-Quest and Harmony Club securities was contrary to the public interest and violated sections 25, 53 and 129.2 of the Act. He also admits that he violated section 122 of the Act as a result of trades in securities of the Harmony Club after the date of the Temporary Order.

(d) The Conduct of Lisa Buchanan

[29] Lisa Buchanan admits in her Agreed Statement of Facts that her conduct with respect to trades in Gold-Quest and the Harmony Club securities was contrary to the public interest. She does not admit to any breaches of the Act.

B. Findings and Conclusions with Respect to the Allegations

[30] Based on Buchanan's admissions in his Agreed Statement of Facts, we find that his conduct was contrary to the public interest and constituted the following breaches of the Act:

- (a) with respect to trading in securities of Gold-Quest:
 - (i) trading in securities of Gold-Quest without registration, contrary to section 25 of the Act;
 - (ii) making illegal distributions of securities of Gold-Quest, contrary to section 53 of the Act; and
 - (iii) as a director of Health and Harmony, authorizing, permitting or acquiescing in breaches of sections 25 and 53 of the Act by Health and Harmony, contrary to section 129.2 of the Act;
- (b) with respect to trading in securities of Harmony Club:

- (i) trading in securities of Harmony Club without registration, contrary to section 25 of the Act;
- (ii) making illegal distributions of securities of Harmony Club, contrary to section 53 of the Act;
- (iii) as a director of Harmony Club, authorizing, permitting or acquiescing in breaches of sections 25 and 53 of the Act by Harmony Club, contrary to section 129.2 of the Act; and
- (iv) trading in securities of Harmony Club while prohibited from doing so by the Temporary Order, contrary to section 122 of the Act.

[31] Based on Lisa Buchanan's admissions in her Agreed Statement of Facts, we find that Lisa Buchanan's conduct with respect to the trading of securities of Gold-Quest and Harmony Club was contrary to the public interest.

IV. FINDINGS WITH RESPECT TO SANCTIONS

A. Preliminary Issue – Bankruptcy of Buchanan

[32] At the hearing on April 28, 2010, counsel for the Buchanans raised the issue of the Commission's ability to order financial penalties or disgorgement in circumstances where a respondent is the subject of a bankruptcy proceeding.

[33] As of the date of the hearing, Buchanan was an undischarged bankrupt. He filed for bankruptcy approximately one month after this proceeding was commenced.

[34] We issued an oral decision on April 29, 2010 in which we concluded that the Commission is currently not a creditor of Buchanan within the meaning of section 69 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"). Any order we would make for financial sanctions would be subject to the determination of the bankruptcy court as to how that order would be treated for purposes of Buchanan's bankruptcy. We deferred to any decision of the bankruptcy court in that respect. We set out below our reasons for the conclusion that the *BIA* does not prevent us from issuing an order imposing financial sanctions on Buchanan.

1. Submissions as to the Application of the *BIA*

(a) Staff's Submissions

[35] Staff submits that any monetary penalty the Commission may impose as a result of this hearing was a contingent liability at the time Buchanan filed for bankruptcy. Staff submits that since no order had been made by the Commission as of the date of the bankruptcy filing, Buchanan's status as an undischarged bankrupt is not an issue in this case.

[36] Staff submits that section 69.1(1) of the *BIA* deals with creditors of an insolvent person and that legal authority indicates that the Commission would not be a creditor until the Commission issues an order imposing a financial sanction.

[37] Staff refers to Buchanan's Statement of Affairs with respect to his bankruptcy application, dated April 16, 2009, in which he recognizes a potential liability in respect of any order made by the Commission. The Statement of Affairs was filed approximately one month after the Notice of Hearing in this matter was issued on March 13, 2009.

[38] Staff further draws our attention to the Trustee in Bankruptcy's Notice of Intended Opposition to Discharge of Bankruptcy dated December 4, 2009 in relation to Buchanan's bankruptcy proceeding. As of the date of that notice, the trustee was opposing discharge of Buchanan until all administrative issues have been resolved.

[39] Staff submits that these circumstances are similar to those in *Re Xi Biofuels Inc.* (2010), 33 O.S.C.B. 3077 ("*Xi Biofuels*"), where the Commission denied a respondent's request to stay the proceeding because there had been a filing for bankruptcy. Staff submits that Buchanan's request that we not impose a monetary penalty is essentially a request for a stay of the proceedings, which should not be permitted.

[40] Staff submits that there is no issue of competing jurisdiction and that the Commission has the right to carry on with this proceeding. Staff submits that there is a public interest reason not to allow an individual to avoid sanctions by the Commission by declaring bankruptcy. Regardless, Staff submits that, if the Commission is not a creditor at the time bankruptcy is declared, section 69.1 of the *BIA* does not apply.

(b) *The Buchanans' Submissions*

[41] Counsel for the Buchanans questioned the effect of the *BIA* on the Commission's ability to issue an order that Buchanan pay financial sanctions (an administrative penalty or disgorgement) given that he is an undischarged bankrupt.

[42] Counsel submits that there may be some additional analysis required beyond the cases provided to determine the question of whether financial sanctions can be imposed in this case.

[43] Counsel for Buchanan distinguishes this matter from *Xi Biofuels*, where the application for a stay was made at an early stage in the proceedings and was an attempt to prevent Staff from proceeding with its investigation. Counsel for Buchanan submits that the situation is quite different in this case, because this matter has proceeded to the point where financial sanctions are being sought and may be ordered.

[44] He also distinguishes disgorgement from an administrative penalty, which he says have different types of financial consequences. He argues that disgorgement orders are much closer to the types of claims that would be stayed under the *BIA*; they are more akin to a claim being made by a creditor because they are for an amount a respondent obtained in connection with breaches of securities laws. Counsel for Buchanan contrasts this with an administrative penalty, which is the result of the Commission finding breaches of securities law and assessing an administrative penalty.

[45] Counsel for Buchanan refers us to the decision of the Manitoba Court of Queen's Bench in *Manitoba (Securities Commission) v. Werbeniuk*, [2009] M.J. No. 89 (Man. Q.B.) ("*Werbeniuk*"), where a claim for compensation under the Manitoba *Securities Act*, C.C.S.M. c.

S.50 (the “**Manitoba Securities Act**”) was held to be subject to a stay under the *BIA*. He questions whether there is a material distinction between the type of compensation order that was sought in that case and Staff’s request for disgorgement or administrative penalty in this proceeding.

[46] Counsel for Buchanan submits that there is no material difference whether a bankruptcy filing occurs prior to the commencement of a Commission proceeding or subsequent to commencement of a proceeding. He submits that, when financial sanctions are imposed by the Commission against an individual who is an undischarged bankrupt, that order is subject to the stay provisions contained in section 69.1 of the *BIA*.

2. The Law

[47] Section 69.1(1)(a) of the *BIA* deals with the ability of a creditor to make a claim against an undischarged bankrupt and provides as follows:

69.1 (1) Subject to subsections (2) to (6) and sections 69.4 and 69.5, on the filing of a proposal under subsection 62(1) in respect of an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person’s property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged or the insolvent person becomes bankrupt; ...

[48] We were also referred to the Divisional Court’s decision in *Ochnik v. Ontario (Securities Commission)* (2007), 224 O.A.C. 99 (“*Ochnik*”), where the Court stated:

The other issue raised by the Appellants was their submission that because 146 was under bankruptcy protection and *Ochnik* was an undischarged bankrupt at the time of the proceeding, there was a statutory stay of all proceedings and the OSC failed to obtain permission from the bankruptcy court to hold a hearing. It is our view, however, that leave of the bankruptcy court is not required where a regulatory body such as the OSC is seeking the type of sanctions as in this case against the Appellants in the public interest pursuant to its powers under the *Securities Act*, which do not relate to the Appellants’ property or affect their creditors.

(*Ochnik, supra* at para. 43)

3. Analysis and Conclusion as to the Application of the *BIA*

[49] We concluded that the Commission is not currently a creditor of Buchanan within the meaning of section 69 of the *BIA*. The Commission would become a creditor only upon the imposition of financial sanctions. It appears to us that, at that point, section 69.1 of the *BIA*, and any other relevant sections of the *BIA*, would apply to the Commission’s claim against Buchanan.

[50] We distinguish the decision in *Werbeniuk* because that case dealt with a specific restitution power contained in the Manitoba Securities Act. A comparable provision is not contained in the Act. This proceeding is not a proceeding to recover a claim against Buchanan. We would add that there is a clear public interest in the Commission being able to conduct an administrative hearing and to order appropriate financial sanctions or costs against an individual under the Act, even if that individual is an undischarged bankrupt. The deterrent effect of such an order extends beyond Buchanan.

[51] We do not think there is a relevant distinction in this respect between an order for disgorgement and an order for an administrative penalty. Certainly, a disgorgement order is based on the amount obtained by a respondent as a result of a breach of the Act. But that is simply the manner of calculation of the amount required to be paid and represents the principle that no one should benefit from their breach of the Act.

[52] We are entitled to order that an amount received by the Commission as a result of either a disgorgement order or an order for an administrative penalty be allocated for the benefit of third parties as contemplated by section 3.4(2)(b) of the Act. Those third parties can include investors who have lost money as a result of the breach of the Act. How the Commission may allocate monies it actually recovers as a result of its orders does not seem to us relevant to determining whether we can, in the first instance, make an order for disgorgement or an administrative penalty against Buchanan. Once an order for disgorgement or an administrative penalty is made by us, we accept that as a result the Commission becomes a creditor of Buchanan and any remedy or action for recovery of that claim is subject to the *BIA*.

[53] It is for the Bankruptcy Court to determine what the effect of our orders would be under the *BIA* and we defer to them in that respect. We would request that Staff consider and resolve that issue before taking any steps to recover against Buchanan or his property as a result of the orders we make as to financial sanctions.

B. Submissions of the Parties on Sanctions

1. Submissions at the Hearing

(a) Sanctions with respect to Buchanan

[54] Staff submits that Buchanan facilitated, guided and assisted investors in purchasing Gold-Quest securities, which Staff says was a Ponzi scheme. Staff requests that the Commission order sanctions against Buchanan based on the damage to Ontario investors and the capital markets as a result of his conduct.

[55] Staff request that the following orders imposing sanctions be made against Buchanan:

- (a) an order that he cease trading in any securities permanently, with any reasonable carve-out for trading in his own RRSP accounts;
- (b) an order that acquisition of any securities by him be prohibited permanently, with any reasonable carve-out for trading in his own RRSP accounts;

- (c) an order that any exemptions contained in Ontario securities law do not apply to him permanently;
- (d) an order that he disgorge US \$352,916.62 obtained as a result of his non-compliance with Ontario securities law;
- (e) an order that he be reprimanded;
- (f) an order that he resign any positions he holds as a director or officer of any issuer, registrant or investment fund manager;
- (g) an order that he be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and
- (h) an order that he pay an administrative penalty of \$150,000 for his failure to comply with Ontario securities law.

[56] Because Buchanan has co-operated with Staff's investigation from a very early stage and because he has agreed to the Statement of Agreed Facts, Staff is not seeking any costs in this matter.

[57] Staff notes that there is no allegation of fraud against Buchanan in this matter. Rather, the proceeding against Buchanan addresses the illegal distribution of securities, unregistered trading in securities and a breach of the Temporary Order.

[58] The disgorgement requested by Staff represents the commissions Buchanan obtained as a result of his involvement in the Gold-Quest investment scheme. Staff submits that nothing in their investigation showed that the Buchanans received any commissions for the Harmony Club trading. Counsel for Buchanan agreed with this submission and added that the facts are consistent with the Harmony Club Investors' monies being placed with third parties at arm's length.

[59] Counsel for the Buchanans submits that the Commission should exercise its discretion based only on the facts that have been admitted when determining sanctions. He submits that Staff's proposals for sanctions appear to be in line with the types of orders that have been made in the past by the Commission in relation to similar conduct.

[60] Counsel for the Buchanans submits that there should be carve-outs from any cease trade orders to permit the Buchanans to trade in publicly listed securities for their own RRSP accounts.

(b) Sanctions with respect to Lisa Buchanan

[61] Staff is seeking the following sanctions against Lisa Buchanan:

- (a) an order that she cease trading in any securities permanently, with any reasonable carve-out for trading in her own RRSP accounts;

- (b) an order that acquisition of any securities by her be prohibited permanently, with any reasonable carve-out for trading in her own RRSP accounts;
- (c) an order that any exemptions contained in Ontario securities law do not apply to her permanently; and
- (d) an order that she be reprimanded.

[62] Staff is not seeking a disgorgement order against Lisa Buchanan because any funds she obtained went to her husband and Staff is requesting a disgorgement order against him.

[63] Staff submits that Lisa Buchanan's role with Health and Harmony was largely administrative and that she was not as actively involved in selling securities as Buchanan. Staff submits, however, that as a result of Lisa Buchanan's role with Harmony Club, she breached the Temporary Order.

2. Submissions in response to Questions from the Panel

[64] Following the first appearance on April 28, 2010, the Secretary of the Commission, at the request of the Panel, sent a letter to the parties informing them that the Panel was considering whether to order sanctions against the Buchanans that would exceed the sanctions requested by Staff. We did not conclude that such notice to the parties was legally required in order for us to impose higher sanctions, but it seemed the appropriate thing to do. The Panel invited Staff and the Buchanans to make additional submissions on the following questions:

With respect to Buchanan:

1. What inferences is the Panel entitled to draw, based on paragraphs 4, 16 and 17 of the agreed statement of facts, with respect to whether Buchanan knew or should have known about the nature of the Gold-Quest scheme?
2. As one of the directing minds of Health and Harmony (see paragraph 9 of the agreed statement of facts), did Buchanan obtain, for purposes of subsection 127(1)10 of the Act, the full amount of \$1,024,506.87 (USD) received by Health and Harmony as compensation from Gold-Quest (see paragraph 19 of the agreed statement of facts)?
3. What financial benefit did Buchanan receive from Harmony Club during the relevant period?
4. Should the administrative penalty imposed by Staff against Buchanan be increased as a result of the fact that over half of the Harmony Club investors purchased Harmony Club shares after the Commission issued its cease trade order on April 1, 2006 (referred to in paragraph 26 of the agreed statement of facts)?

With respect to Lisa Buchanan:

5. What financial benefit did Lisa Buchanan receive from each of Health and Harmony and Harmony Club during the relevant period?

With respect to Buchanan and Lisa Buchanan:

6. Are there any other factors that the Commission should consider in determining the appropriate sanctions in this case?

[65] Staff and counsel for the Buchanans attended a hearing on September 3, 2010 to address the Questions from the Panel and make additional submissions.

(1) What inferences may the Panel draw with respect to Buchanan's knowledge of the Gold-Quest scheme?

[66] Staff submits that it is clear from the negotiated facts in Buchanan's Agreed Statement of Facts that Buchanan knew about the commission structure used by Gold-Quest (described in paragraph 14 of these reasons). Staff submits that the Panel may draw whatever inferences it feels entitled to in determining the severity of the sanctions against Buchanan for breaching the prospectus and registration requirements of the Act.

[67] Counsel for Buchanan submits that the Agreed Statement of Facts is the result of a negotiation between Staff and counsel for Buchanan. He submits that through this process certain agreed facts may have been begrudgingly accepted by either Staff or Buchanan for the purposes of reaching an overall agreement on the facts. Counsel for Buchanan submits that to go beyond the Agreed Statement of Facts in any substantive manner would undermine the process, which permits matters to be resolved efficiently without the cost of a full hearing.

[68] He submits that the Commission may draw certain inferences from the agreed facts in determining what the appropriate sanctions are. He submits, however, that it would not be appropriate for the Panel to draw inferences from the agreed facts as to some other type of breach of the Act or misconduct that has not been admitted.

[69] Counsel for Buchanan submits that inferences that go to what sanctions should be ordered can be distinguished from inferences used to make additional substantive findings, for example, of an intentional or knowing conduct that has not been admitted. He submits that it would not be appropriate to draw such inferences and that doing so could undermine the integrity of the Agreed Statement of Facts and could result in unfair consequences for Buchanan.

[70] Counsel for Buchanan submits that the Commission has previously found that there is a range of conduct that can result in a breach of the registration and prospectus provisions, and depending on the specific conduct at issue, there can be a range of possible sanctions for breaches of the same sections of the Act.

(2) *As one of the directing minds of Health and Harmony, did Buchanan obtain the full amount of US \$1,024,506.87 as compensation?*

[71] Staff is requesting disgorgement from Buchanan of US \$352,916.62, the amount that Buchanan obtained from Health and Harmony. Staff submits that US \$352,916.62 is the amount that Staff and Buchanan agreed to in negotiating his Agreed Statement of Facts.

[72] Staff points out that it was not alleged that Health and Harmony generally accepted money from the Ontario Gold-Quest investors and then sent the money to Gold-Quest. Rather, the Agreed Statements of Fact state that the Buchanans and others at Health and Harmony provided information and documents and facilitated the transfer of funds from the Ontario Gold-Quest investors directly to Gold-Quest, acting as referring agents.

[73] Counsel for Buchanan also submits that the agreed facts are a short form summary of the way the Gold-Quest commission structure worked, and that there is significantly greater complexity in the way the Gold-Quest investment was carried out, including the commission structure. He submits that the Panel can assume that the US \$352,916.62 being requested by Staff for disgorgement was not an arbitrary amount.

(3) *What financial benefit did Buchanan receive from Harmony Club?*

[74] Staff submits that there is no evidence before us that Buchanan received any financial compensation from Harmony Club.

(4) *Should the administrative penalty imposed on Buchanan be increased as a result of the fact that over half of the Harmony Club Investors invested after the Temporary Order was issued?*

[75] Staff submits that the \$150,000 administrative penalty it is requesting takes into account all of the conduct at issue, including Buchanan's actions with respect to the sale of Gold-Quest and Harmony Club securities. Staff also submits that this amount reflects Buchanan's financial circumstances as an undischarged bankrupt.

[76] Staff submits that there is no suggestion that Buchanan was unaware of the terms or effect of the Temporary Order. Staff submits that Buchanan either blatantly ignored the Temporary Order or was spectacularly ignorant as to its effect.

[77] With respect to Buchanan's financial position, Staff submits that there are no funds available to him because he has filed for personal bankruptcy. Staff further submits that an administrative penalty of \$150,000 is a significant amount of money to most people and would have a sufficiently deterrent effect. Staff submits that in all of the circumstances, a \$150,000 administrative penalty against Buchanan is appropriate.

(5) What financial benefit did Lisa Buchanan receive from Health and Harmony and the Harmony Club?

[78] Staff submits that there is no evidence before us that Lisa Buchanan received any financial compensation in relation to the trades in Harmony Club securities.

(6) Are there any other factors the Commission should consider in determining the appropriate sanctions?

[79] Staff submits that an aggravating factor with respect to sanctions is Buchanan's statements in two articles published in the *Durham Business Times* on August 24, 2010. Those statements attribute responsibility for the difficulties he has experienced to the Commission. Staff submits that Buchanan's comments demonstrate a profound lack of insight into his own actions and should be considered in assessing sanctions (see paragraphs 100 and 101 of these reasons for an excerpt from one of the articles).

[80] With respect to the statements published in the *Durham Business Times*, counsel for Buchanan submits that those are unsubstantiated comments attributed to Buchanan and that the Panel should consider the weight that should be given to them.

C. The Law on Sanctions

[81] In determining the appropriate sanctions, we are guided by the Commission's dual mandate set out in section 1.1 of the Act to:

- (a) provide protection to investors from unfair, improper or fraudulent practices; and
- (b) foster fair and efficient capital markets and confidence in capital markets.

[82] The Commission does not impose sanctions to punish past conduct. Rather, we act in a protective and preventative manner to restrain future conduct that is harmful to investors or the capital markets. Our role in ordering sanctions was described in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611:

... the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.

[83] The Commission has jurisdiction to order sanctions in the public interest that restrict or ban respondents from participating in the Ontario capital markets. The Supreme Court of Canada has stated that:

... the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.

(Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission), [2001] 2 S.C.R. 132 at para. 43)

[84] In addition, the Supreme Court of Canada has recognized that general deterrence is an important factor in imposing sanctions: "... it is reasonable to view general deterrence as an appropriate and perhaps necessary consideration in making orders that are both protective and preventative" (*Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60).

[85] The Commission should consider all of the relevant factors and considerations when determining the appropriate sanctions, including:

- (a) the seriousness of the conduct and the breaches of the Act;
- (b) the respondent's experience in the marketplace;
- (c) the level of the respondent's activity in the marketplace;
- (d) whether or not there has been any recognition of the seriousness of the improprieties;
- (e) whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets;
- (f) the size of any profit or loss avoided from the illegal conduct;
- (g) the size of any financial sanction or voluntary payment;
- (h) the effect any sanction may have on the livelihood of the respondent;
- (i) the restraint any sanction may have on the ability of a respondents to participate without check in the capital markets;
- (j) the reputation and prestige of the respondent;
- (k) the remorse of the respondent;
- (l) the shame, or financial pain, that any sanction would reasonably cause to the respondent; and
- (m) any mitigating factors.

(Re M.C.J.C. Holdings Inc. (2002), 25 O.S.C.B. 1133 at para. 26 ("M.C.J.C.") and Re Belteco Holdings Inc. (1998), 21 O.S.C.B. 7743 at paras. 25-26)

[86] Ultimately, any sanctions we impose must be proportionate to the circumstances and conduct of each of the Buchanans (*M.C.J.C.*, *supra* at para. 10 and *Re Rowan* (2010), 33 O.S.C.B. 91 at para. 103). In imposing an administrative penalty and disgorgement, we will consider the overall financial sanctions imposed on Buchanan (*Re Sabourin et al* (2010), 33 O.S.C.B. 5299 at para. 59).

Disgorgement

[87] Subsection 127(1)10 of the Act provides that if a person or company has not complied with Ontario securities law, the Commission can order the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance.

[88] The disgorgement remedy is intended to ensure that respondents do not obtain any financial benefit from their breaches of Ontario securities law and to provide specific and general deterrence. Disgorgement is not intended primarily as a means to compensate investors for their losses. However, subsection 3.4(2)(b) of the Act allows the Commission to order that amounts paid to the Commission in satisfaction of a disgorgement order or an administrative penalty be allocated to or for the benefit of third parties, which can include investors. We do that in this case (see paragraph 119 of these reasons).

[89] In *Re Limelight* (2008), 31 O.S.C.B. 12030 (“*Limelight*”), the Commission identified a list of non-exhaustive factors to be considered when contemplating a disgorgement order. They are:

- (a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;
- (b) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;
- (c) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;
- (d) whether the individuals who suffered losses are likely to be able to obtain redress by other means; and
- (e) the deterrent effect of a disgorgement order on the respondents and other market participants.

(*Limelight, supra*, at para. 52)

[90] Staff has the onus of proving on a balance of probabilities the amount obtained by a respondent as a result of non-compliance with Ontario securities law.

[91] The Commission commented in *Limelight* on how amounts obtained are to be determined for purposes of a disgorgement order:

We note that paragraph 10 of subsection 127(1) of the Act provides that disgorgement can be ordered with respect to “any amounts obtained” as a result of non-compliance with the Act. Thus, the legal question is not whether a respondent “profited” from the illegal activity but whether the respondent “obtained amounts” as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the “profit” made as a result of the activity. This approach also avoids the Commission having to determine how “profit” should be calculated in any particular circumstance. Establishing how much a respondent obtained as a result of his or her misconduct is a much more straightforward test. In our view, where there is a breach of Ontario securities law that involves the widespread and illegal distribution of securities to members of the public, it is appropriate that a respondent disgorge all the funds that were obtained from investors as a result of that illegal activity. In our view, such a disgorgement order is authorized under paragraph 10 of subsection 127(1) of the Act.

(Limelight, supra, at para. 49)

D. Analysis

1. Key Factors Applicable to Sanctions in this Case

Seriousness of the Conduct and Breaches of the Act

[92] Buchanan admitted to breaches of sections 25 and 53 relating to his involvement with the two separate investment schemes facilitated through Health and Harmony and Harmony Club. As a result of these activities, investors invested approximately US \$4.3 million in the purchase of Gold-Quest or Harmony Club securities. Those investors have lost a substantial portion of those investments.

[93] Buchanan facilitated sales of Gold-Quest securities to the Ontario Gold-Quest investors who he knew were promised 87.5% annual returns on their investments. At the same time, he also knew that Gold-Quest paid 88% of the funds received from investors as commissions. Those facts should have raised questions in Buchanan’s mind as to the legitimacy of the Gold-Quest investment scheme. Given that he ran a tax business, Buchanan was not unsophisticated with respect to financial matters.

[94] In addition, Buchanan has admitted to breaching the terms of the Temporary Order by participating in trades in Harmony Club securities. The Commission does not tolerate the breach of its cease trade orders. Those orders are intended to protect investors from the very kind of conduct that occurred here. We are particularly concerned that over half of the Harmony Club Investors invested after the Temporary Order was issued. Sanctions ordered in this case must send a clear deterrent message to Buchanan and the public that such breaches of Commission orders are not acceptable.

[95] Lisa Buchanan has admitted that her conduct relating to the sales of Gold-Quest and Harmony Club securities was contrary to the public interest. We believe that a reasonable inference from her Agreed Statement of Facts is that she also breached the Temporary Order.

Profit from the Illegal Conduct

[96] As noted above, with respect to the Gold-Quest scheme, Buchanan's company, Health and Harmony, received US \$1,024,506.87 in compensation and Buchanan received directly US \$352,916.62.

[97] There is no evidence before us, however, that the Buchanans received any financial compensation for their roles in trading in Harmony Club securities.

Buchanan's Financial Position

[98] As noted above, Buchanan has filed for personal bankruptcy. At the September 3, 2010 hearing, Staff submitted that it was not likely that he would be able to make any payments to the Commission in respect of any order for disgorgement or an administrative penalty.

[99] A respondent's financial position and ability to pay is one of many factors that the Commission considers when determining appropriate sanctions. In our view, the fact that Buchanan is an undischarged bankrupt should not deter us from imposing the financial sanctions we consider appropriate in the circumstances. While the Commission may not be able to recover the amounts ordered to be paid by Buchanan, such orders reflect the seriousness with which we view his conduct and deter others from similar conduct.

Any Remorse on the Part of the Respondents

[100] Buchanan made statements regarding his involvement in the Gold-Quest investment scheme to the *Durham Business Times* that were published in an article dated August 24, 2010. Buchanan is quoted as saying that he attributes the difficulties he has experienced in relation to this matter to the Commission:

He said he's been devastated by the OSC allegations and the stringent actions undertaken by the commission. The commission, he said, has all but wiped him out.

"I don't attribute it to Gold-Quest," he said. "I attribute it 100 per cent to the OSC"

(Jeff Mitchell, "Authorities target Oshawa firm in alleged Ponzi scheme", *Durham Business Times*, August 24, 2010, Final Edition at p. 1)

[101] Later in the same article, Buchanan is quoted further on the Gold-Quest investment scheme:

Mr. Buchanan said that in spite of everything that's happened, it has not conclusively been proved that [Gold-Quest] was a Ponzi scheme. He cites the fact

that [Gold-Quest's] directors and officers have been outspoken and defiant in the face of the allegations, rather than scattering like cockroaches, as one might expect.

“If you were a scammer, you’d take the money and run,” he said.

“I’m not going to say it is (a Ponzi scheme) until it’s proven. Because I don’t have the evidence.”

The SEC investigation continues. And in mid-June, the Alberta Securities Commission released findings of its examination of the company.

“...(W)e found the Gold-Quest Offering to be a sham investment scheme, a classic Ponzi scheme and a pyramid scheme,” the commission concluded.

(Mitchell, *supra.*)

[102] Buchanan’s comments made subsequent to the April 28, 2010 hearing on sanctions in this matter do not evidence any remorse or acceptance of his culpability in the trading of Gold-Quest securities that resulted in substantial losses to investors.

Recovery of Funds Invested by Harmony Club Investors

[103] Staff submits that in 2008, approximately \$300,000 of the funds invested in Health and Harmony were frozen in the bank accounts of some of the respondents by order of the Ontario Superior Court.

[104] Staff further states that attempts had been made to repatriate some of the US \$2.5 million invested by Harmony Club investors that were sent to two entities in the United States. As of the September 3, 2010 hearing, the total amount of the funds recovered or frozen in accounts was \$917,000.

[105] We are hopeful that with the repatriation of monies sent to third parties in the United States, Harmony Club investors may be able to recover further funds. Staff states that they plan to ultimately go before the Ontario Superior Court with a distribution plan to attempt to return any funds recovered to the Harmony Club Investors.

[106] Counsel for the Buchanans submits that the purpose of seeking recovery of these funds has been to permit the distribution of them to the Harmony Club Investors. He submits that the Commission has jurisdiction to make an order that contemplates the possibility that some further funds may be recovered in the future.

[107] In imposing sanctions, we have taken into account the potential recoveries available to investors referred to in paragraphs 103 to 105 of these reasons.

[108] We have also given the Respondents some credit for having filed the Agreed Statements of Fact. That avoided the cost and expense of an extended hearing on the merits.

2. Prohibitions on Participation in the Capital Markets

[109] The conduct of the Buchanans in this matter is serious. Investors have suffered substantial losses. We find it appropriate to make orders permanently limiting the Buchanans' participation in Ontario capital markets, subject to a carve-out to permit trading in an RRSP.

3. Disgorgement Order

[110] Buchanan admits that he obtained commissions of US \$352,916.62 from his participation in trades of Gold-Quest securities. Those commissions were paid as compensation for Buchanan's referrals of Ontario Gold-Quest investors. Staff is requesting that this amount be disgorged to the Commission.

[111] In total, Health and Harmony received US \$1,024,506.87 in compensation for its involvement in referring investors to Gold-Quest. Because Buchanan was a directing mind of Health and Harmony, we could have required that he disgorge the entire amount received by Health and Harmony in connection with the Gold-Quest investment scheme. However, on balance, we have concluded that we should accept Staff's recommendation with respect to disgorgement.

[112] In the circumstances, we find it appropriate to order that Buchanan disgorge \$352,000 (in Canadian funds) to the Commission under subsection 127(1)10 of the Act. Such amount shall be allocated to or for the benefit of third parties under subsection 3.4(2)(b) of the Act in accordance with this decision (see paragraph 119 of these reasons).

4. Administrative Penalty

[113] Buchanan's conduct warrants a substantial administrative penalty. He was involved in two investment schemes in which Ontario investors invested approximately US \$4.3 million. In addition, the majority of the Harmony Club investors made their investment after Buchanan was ordered to cease trading in securities by the Temporary Order. That is unacceptable conduct.

[114] Although Staff has requested an administrative penalty of \$150,000, we do not consider that amount sufficient to deter similar future abuses. As a result of Buchanan's activities, Ontario investors invested approximately US \$4.3 million. Those investors have lost a substantial amount of that investment. Health and Harmony received US \$1,024,506.87 in commissions from those trades.

[115] In our view, to be a deterrent, the amount of an administrative penalty must bear some reference to the amount raised from investors by means of the investment scheme. Our disgorgement order relates to the actual amounts illegally obtained by Buchanan from Gold-Quest as commissions. However, disgorgement in itself is not enough to effectively deter similar behaviour. A financial penalty of \$150,000, as requested by Staff, is of limited deterrence when the amount illegally raised from Ontario investors is approximately US \$4.3 million. We note that, in raising those investor funds, Buchanan committed numerous breaches of the Act over a period of more than two years and breached the Temporary Order.

[116] We have considered the submissions made by both Staff and counsel for Buchanan as to the appropriate administrative penalty in this case. However, we find that the protection of investors and Ontario capital markets requires a higher administrative penalty than that requested by Staff. Financial sanctions must act to deter future behavior that is harmful to investors and Ontario capital markets. They are not a license fee to breach Ontario securities law.

[117] We order that Buchanan pay an administrative penalty of \$300,000 under subsection 127(1)9 of the Act. That amount shall be allocated to or for the benefit of third parties in accordance with section 3.4(2)(b) of the Act in accordance with this decision (see paragraph 119 of these reasons).

5. Allocation of Amounts for the Benefit of Third Parties

[118] While we consider it to be in the public interest to order Buchanan to disgorge amounts obtained by him as a result of his breaches of the Act and to pay a substantial administrative penalty, it would be unfair and inappropriate, in our view, if those orders had the effect of reducing amounts that investors are otherwise able to recover from the Buchanans.

[119] Accordingly, any amounts paid to the Commission under our disgorgement and administrative penalty orders in this matter shall be allocated to or for the benefit of third parties other than the Buchanans, including investors who lost money as a result of investing in the Gold-Quest or Harmony Club securities, in accordance with subsection 3.4(2)(b) of the Act. Such amounts are to be distributed to investors who lost money as a result of investing in the Gold-Quest or Harmony Club securities on such basis, on such terms and to such investors as Staff in its discretion determines to be appropriate in the circumstances. A distribution to investors shall be made only if Staff is satisfied that doing so is reasonably practicable in the circumstances and only if Staff concludes that there are sufficient funds available to justify doing so. If, for any reason, Staff decides at any time or from time to time not to distribute any such amounts to investors, such amounts may, by further Commission order, be allocated to or for the benefit of other third parties. Any panel of the Commission may, on the application of Staff, make any order it considers expedient with respect to the matters addressed by this paragraph.

[120] The terms of paragraph 119 of these reasons shall not give rise to or confer upon any person, including any investor (i) any legal right or entitlement to receive, or any interest in, amounts received by the Commission under our orders for disgorgement and administrative penalty, or (ii) any right to receive notice of any application by Staff to the Commission made in connection with that paragraph or of any exercise by the Commission of any discretion granted to it under that paragraph.

[121] It may be that Staff will conclude that the Commission should not make a claim in bankruptcy against Buchanan (if the Commission is otherwise entitled to do so under the *BIA*) that could reduce the assets otherwise available to investors claiming in that bankruptcy. We leave that entirely to Staff's discretion.

V. CONCLUSION

[122] Accordingly, for the reasons discussed above, we find that it is in the public interest to make the following orders.

[123] With respect to Buchanan, we order:

- (a) that he cease trading in any securities permanently;
- (b) that he be prohibited permanently from acquiring securities;
- (c) any exemptions contained in Ontario securities law do not apply to him permanently;
- (d) that he be reprimanded;
- (e) that he resign any positions he holds as a director or officer of any issuer, registrant or investment fund manager;
- (f) that he be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
- (g) that he disgorge \$352,000 obtained as a result of his non-compliance with Ontario securities law, such amount to be allocated to or for the benefit of third parties in accordance with this decision; and
- (h) that he pay an administrative penalty of \$300,000 for his non-compliance with Ontario securities law, such amount to be allocated to or for the benefit of third parties in accordance with this decision.

[124] The foregoing trading prohibitions shall be subject to a carve-out to permit limited trading in listed securities in his RRSP, in accordance with our order.

[125] With respect to Lisa Buchanan, we order:

- (a) that she cease trading in any securities permanently;
- (b) that she be prohibited permanently from acquiring securities;
- (c) any exemptions contained in Ontario securities law do not apply to her permanently;
and
- (d) that she be reprimanded.

[126] The foregoing trading prohibitions shall be subject to a carve-out to permit limited trading in listed securities in her RRSP, in accordance with our order.

[127] In our view, these sanctions are proportionate to the conduct of each of the Buchanans in these circumstances. We will issue an order substantially in the form of Schedule “C” to these reasons, giving effect to this decision.

Dated at Toronto this 26th day of November, 2010.

“James E. A. Turner”

James E. A. Turner

“Carol S. Perry”

Carol S. Perry

“Sinan O. Akdeniz”

Sinan O. Akdeniz

SCHEDULE "A"



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 -

DONALD IAIN BUCHANAN

AGREED STATEMENT OF FACTS

Staff of the Ontario Securities Commission ("Staff") and Donald Iain Buchanan ("the Respondent"), agree to the following facts regarding violations of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the "Act") and conduct contrary to the public interest :

Background: Sale of Gold-Quest Securities

1. Gold-Quest International ("Gold-Quest") was a Panamanian corporation that was controlled by a number of individuals resident in the United States.
2. From June 2006 to May 2008, unbeknownst to the Respondent, Gold-Quest accepted approximately \$29 million (U.S.) from investors, including investors in Ontario, through direct solicitations, an Internet website maintained by Gold-Quest and by referrals from existing investors.
3. On May 6, 2008, the Securities and Exchange Commission of the United States (the "SEC") filed a complaint in the United States District Court, District of Nevada, alleging that Gold-Quest was operating a pyramid or "Ponzi" scheme. Gold-Quest has never been registered in any capacity with the SEC. The SEC further alleged that Gold-Quest used very little of the money that it raised for legitimate investments but rather the vast majority of new investor funds was used by Gold-Quest to make payments to current investors and commissions to

participants in the Ponzi scheme. The SEC complaint (and the related allegations advanced by the SEC) was not in place at the time the Respondent dealt with Gold-Quest as outlined above.

4. Individuals that introduced an investor to Gold-Quest would receive the title “Administrative Manager” for the new investor. Administrative Managers would receive an up-front commission of 10% of that investor’s original investment and then a further 4% per month for a year (for a total commission of 58% of the principal invested). The individual who introduced the Administrative Manager to Gold-Quest would receive the title “Managing Director” for the new investor and would receive a commission of 1.5% per month (for a year for a total of 18% of the principal invested). Lastly, the individual who introduced the Managing Director to Gold-Quest would receive the title “Supervisory Managing Director” for the new investor and would receive a commission of 1% per month for one year (for a total of 12% of the principal invested). In sum, when a new investor sent funds to Gold-Quest, 88% of that investor’s funds were earmarked for commissions to be paid to their Administrative Manager, Managing Director and the Supervisory Managing Director over the course of a year.
5. From June 2006 until May, 2008, Gold-Quest disbursed \$20.3 million (U.S.) through distributions to investors and payment of commissions as set out in paragraph 3 and 4. Gold-Quest received no significant income from its investments or business operations during this period.
6. Gold-Quest has ceased to operate and has been put into receivership by order of the United States District Court. As of December 12, 2008, the receiver appointed by the United States District Court had only recovered \$273,475.85 (U.S.).
7. Gold-Quest has never been registered in any capacity with the Ontario Securities Commission (the “Commission”).
8. No preliminary prospectus or prospectus has ever been filed with the Commission to attempt

to qualify the trading of Gold-Quest securities.

The Respondent and Related Parties

9. The Respondent was a director of both 1725587 Ontario Inc., carrying on business as Health and Harmony, (“Health and Harmony”) and the Harmony Club Inc. (the “Harmony Club”). He is also the spouse of Lisa Buchanan (“Buchanan”). The Respondent resides in Oshawa, Ontario.
10. Health and Harmony is an Ontario corporation that was incorporated on September 20, 2007. Prior to being incorporated, Health and Harmony operated as a general partnership whose business name was registered on November 14, 2006 with the Province of Ontario. Health and Harmony carried out its business from an office located at Unit 390, 1288 Ritson Road North, Oshawa, Ontario.
11. The Harmony Club is a Canadian corporation that was incorporated on December 21, 2007. The Harmony Club also carried out its business from an office located at Unit 390, 1288 Ritson Road North, Oshawa, Ontario.
12. Buchanan was an employee of Health and Harmony and a director of the Harmony Club. Buchanan resides in Oshawa, Ontario. Buchanan was not an active directing mind of the Harmony Club.

Trading Securities of Gold-Quest in Ontario

13. From November of 2006 until February of 2008 (the “Material Time”), Health and Harmony, the Respondent and Buchanan and the other employees, representatives and agents of Health and Harmony promoted the trading of securities in Gold-Quest to Ontario residents (the “Gold-Quest Investors”). The Respondent was one of the directing minds of Health and Harmony during the Material Time.
14. Throughout the Material Time, Health and Harmony, the Respondent and Buchanan were not registered in any capacity with the Commission.

15. During the Material Time, the Gold-Quest Investors sent over \$1,800,000 (U.S.) to Gold-Quest as a result of promotional and trading activities by the Respondents. These activities included recommending investing with Gold-Quest, providing specific information regarding the nature of the investment with Gold-Quest, providing the documents required to invest with Gold-Quest, and in certain cases facilitating the transfer of funds to Gold-Quest on behalf of investors.
16. The Gold-Quest Investors entered into one-year investment contracts with Gold-Quest. Gold-Quest stated investor funds would be invested in the foreign exchange or “forex” market. Gold-Quest informed the Gold-Quest Investors that they would receive an annual return on investment equal to 87.5% of the funds invested with Gold-Quest. However, in order to receive this 87.5% investment return, the Gold-Quest Investors would be required to leave their funds with Gold-Quest for a year.
17. The Respondent and Buchanan were all aware of the terms of the investment contracts entered into by the Gold-Quest Investors as well as the commission structure outlined above in paragraph 4. However, the Respondent did not inform the Gold-Quest Investors of this commission structure.
18. There were no exemptions under the Act which allowed Health and Harmony, the Respondent and Buchanan to trade Gold-Quest securities in Ontario.
19. As a result of its role related to the trading of securities in Gold-Quest, Health and Harmony received \$1,024,506.87 (USD) in compensation from Gold-Quest.
20. As a result of his role related to the trading of securities in Gold-Quest, the Respondent received \$145,850.00 (USD) in compensation through an account of an accounting business controlled by him and \$207,066.62 (USD) in compensation through an account controlled by Health and Harmony. The total compensation received was \$352,916.62 (USD).

The Temporary Cease Trade Order of April 1, 2008

21. On April 1, 2008, the Commission issued a temporary order under sections 127(1) and (5) of the Act (the “Temporary Order”). Pursuant to the Temporary Order, Health and Harmony, the Respondent and Buchanan were prohibited from trading in any securities and that any exemptions contained in Ontario securities law did not apply to Health and Harmony, the Respondent and Buchanan.

Trading in Securities of the Harmony Club

22. The Harmony Club was created by the Respondent, Buchanan and Sandi Gale (“Gale”) who then offered securities in this corporation to approximately 138 Ontario investors (the “Harmony Club Investors”) from October of 2007 until July of 2008. During this time, the Respondent was one of the directing minds of the Harmony Club.

23. Through the activities of the Respondents and Gale, the Harmony Club received almost \$2.5 million (U.S.) from the Harmony Club Investors. These funds were then used by the Harmony Club for investments in the United States.

24. No preliminary prospectus or prospectus has ever been filed with the Commission to attempt to qualify the trading of Harmony Club securities.

25. There were no exemptions under the Act available to the Respondent, Buchanan or Gale allowing them to trade Harmony Club securities.

26. Over half of the Harmony Club Investors purchased shares in the Harmony Club from the Respondents and Gale after April 1, 2008, the date of the Temporary Order.

Violations of the Securities Act and Conduct Contrary to the Public Interest

i) Conduct Related to Trading in Securities of Gold-Quest

27. The conduct of the Respondent was contrary to the public interest and constituted the following breaches of the Act:

- (i) trading without registration contrary to section 25 of the Act;
- (ii) an illegal distribution of securities contrary to section 53 of the Act; and
- (iii) as a director of Health and Harmony, directing, permitting or acquiescing in breaches of sections 25 and 53 of the Act by Health and Harmony contrary to section 129.2 of the Act.

ii) Conduct Related to Trading in Securities of the Harmony Club

28. The conduct of the Respondent was contrary to the public interest and constituted the following breaches of the Act:

- (i) trading without registration contrary to section 25 of the Act; and
- (ii) an illegal distribution of securities contrary to section 53 of the Act.

- (iii) as a director of the Harmony Club, directing, permitting or acquiescing in breaches of sections 25 and 53 of the Act by the Harmony Club contrary to section 129.2 of the Act; and

- (iv) trading in securities while prohibited from doing so by an order of the Commission contrary to section 122 of the Act.

Tom Atkinson
Director Enforcement

DATED AT TORONTO this ___ day of April, 2010

SCHEDULE "B"



Ontario
Securities
Commission

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

- AND -

LISA BUCHANAN

AGREED STATEMENT OF FACTS

Staff of the Ontario Securities Commission ("Staff") and Lisa Buchanan (the "Respondent") agree to the following facts regarding violations of the *Securities Act*, R.S.O 1990, c. S. 5, as amended (the "Act") and conduct contrary to the public interest

Background: Sale of Gold-Quest Securities

1. Gold-Quest International ("Gold-Quest") was a Panamanian corporation that was controlled by a number of individuals resident in the United States.
2. From June 2006 to May 2008, unbeknownst to the Respondent, Gold-Quest accepted approximately \$29 million (U.S.) from investors, including investors in Ontario, through direct solicitations, an Internet website maintained by Gold-Quest and by referrals from existing investors.
3. On May 6, 2008, the Securities and Exchange Commission of the United States (the "SEC") filed a complaint in the United States District Court, District of Nevada, alleging that Gold-Quest was operating a pyramid or "Ponzi" scheme. Gold-Quest has never been registered in any capacity with the SEC. The SEC further alleged that Gold-Quest used very little of the

money that it raised for legitimate investments but rather the vast majority of new investor funds was used by Gold-Quest to make payments to current investors and commissions to participants in the Ponzi scheme. The SEC complaint (and the related allegations advanced by the SEC) was not in place at the time the Respondent dealt with Gold-Quest as outlined above.

4. Individuals that introduced an investor to Gold-Quest would receive the title “Administrative Manager” for the new investor. Administrative Managers would receive an up-front commission of 10% of that investor’s original investment and then a further 4% per month for a year (for a total commission of 58% of the principal invested). The individual who introduced the Administrative Manager to Gold-Quest would receive the title “Managing Director” for the new investor and would receive a commission of 1.5% per month (for a year for a total of 18% of the principal invested). Lastly, the individual who introduced the Managing Director to Gold-Quest would receive the title “Supervisory Managing Director” for the new investor and would receive a commission of 1% per month for one year (for a total of 12% of the principal invested). In sum, when a new investor sent funds to Gold-Quest, 88% of that investor’s funds were earmarked for commissions to be paid to their Administrative Manager, Managing Director and the Supervisory Managing Director over the course of a year.
5. From June 2006 until May, 2008, Gold-Quest disbursed \$20.3 million (U.S.) through distributions to investors and payment of commissions as set out in paragraph 3 and 4. Gold-Quest received no significant income from its investments or business operations during this period.
6. Gold-Quest has ceased to operate and has been put into receivership by order of the United States District Court. As of December 12, 2008, the receiver appointed by the United States District Court had only recovered \$273,475.85 (U.S.).
7. Gold-Quest has never been registered in any capacity with the Ontario Securities Commission (the “Commission”).

8. No preliminary prospectus or prospectus has ever been filed with the Commission to attempt to qualify the trading of Gold-Quest securities.

The Respondent and Related Parties

9. The Respondent was an employee of 1725587 Ontario Inc., carrying on business as Health and Harmony, (“Health and Harmony”) and a director of the Harmony Club Inc. (the “Harmony Club”). She is also the spouse of Donald Iain Buchanan (“Buchanan”). The Respondent resides in Oshawa, Ontario.
10. Health and Harmony is an Ontario corporation that was incorporated on September 20, 2007. Prior to being incorporated, Health and Harmony operated as a general partnership whose business name was registered on November 14, 2006 with the Province of Ontario. Health and Harmony carried out its business from an office located at Unit 390, 1288 Ritson Road North, Oshawa, Ontario.
11. The Harmony Club is a Canadian corporation that was incorporated on December 21, 2007. The Harmony Club also carried out its business from an office located at Unit 390, 1288 Ritson Road North, Oshawa, Ontario. The Respondent was not an active directing mind of the Harmony Club.
12. Buchanan was a director of both Health and Harmony and the Harmony Club. Buchanan was also one of the partners of Health and Harmony when it operated as a general partnership. Buchanan resides in Oshawa, Ontario.

Trading Securities of Gold-Quest in Ontario

13. From November of 2006 until February of 2008 (the “Material Time”), Health and Harmony, other employees, representatives and agents of Health and Harmony promoted the trading of securities in Gold-Quest to Ontario residents (the “Gold-Quest Investors”).

14. Throughout the Material Time, Health and Harmony, Buchanan and the Respondent were not registered in any capacity with the Commission.
15. During the Material Time, the Gold-Quest Investors sent over \$1,800,000 (U.S.) to Gold-Quest as a result of promotional and trading activities by Health and Harmony and other employees, representatives and agents of Health and Harmony. These activities included recommending investing with Gold-Quest, providing specific information regarding the nature of the investment with Gold-Quest, providing the documents required to invest with Gold-Quest, and in certain cases facilitating the transfer of funds to Gold-Quest on behalf of investors. The Respondent assisted Buchanan and other principals of Health and Harmony in these activities in a largely administrative role which constituted acts in furtherance of a trade.
16. The Gold-Quest Investors entered into one-year investment contracts with Gold-Quest. Gold-Quest stated investor funds would be invested in the foreign exchange or “forex” market. Gold-Quest informed the Gold-Quest Investors that they would receive an annual return on investment equal to 87.5% of the funds invested with Gold-Quest. However, in order to receive this 87.5% investment return, the Gold-Quest Investors would be required to leave their funds with Gold-Quest for a year.
17. The Respondent and Buchanan were all aware of the terms of the investment contracts entered into by the Gold-Quest Investors as well as the commission structure outlined above in paragraph 4. However, the Respondent did not inform the Gold-Quest Investors of this commission structure.
18. There were no exemptions under the Act which allowed Health and Harmony, Buchanan and the Respondent to trade Gold-Quest securities in Ontario.

The Temporary Cease Trade Order of April 1, 2008

19. On April 1, 2008, the Commission issued a temporary order under sections 127(1) and (5) of the Act (the “Temporary Order”). Pursuant to the Temporary Order, Health and Harmony,

the Respondent and Lisa Buchanan were prohibited from trading in any securities and that any exemptions contained in Ontario securities law did not apply to Health and Harmony, the Respondent and Buchanan.

Trading in Securities of the Harmony Club

20. The Harmony Club was created by the Respondent, Buchanan, and Sandi Gale (“Gale”) who then offered securities in this corporation to approximately 138 Ontario investors (the “Harmony Club Investors”) from October of 2007 until July of 2008. As mentioned above, the Respondent was not an active directing mind of the Harmony Club.
21. The Harmony Club received almost \$2.5 million (U.S.) from the Harmony Club Investors. These funds were then used by the Harmony Club for investments in the United States.
22. No preliminary prospectus or prospectus has ever been filed with the Commission to attempt to qualify the trading of Harmony Club securities.
23. There were no exemptions under the Act available to the Respondent, Buchanan and Gale allowing them to trade Harmony Club securities.
24. Over half of the Harmony Club Investors purchased shares in the Harmony Club from the Respondent, Buchanan and Gale after April 1, 2008, the date of the Temporary Order.

Conduct Contrary to the Public Interest

i) Conduct Related to Trading in Securities of Gold-Quest

25. The conduct of the Respondent was contrary to the public interest.

ii) Conduct Related to Trading in Securities of the Harmony Club

26. The conduct of the Respondent was contrary to the public interest.

Tom Atkinson

Director Enforcement

DATED AT TORONTO this ____ day of April, 2010



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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SCHEDULE "C"

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

- AND -

**IN THE MATTER OF
GOLD-QUEST INTERNATIONAL, 1725587 ONTARIO INC. carrying on business as
HEALTH AND HARMONEY, HARMONEY CLUB INC., DONALD IAIN BUCHANAN,
LISA BUCHANAN and SANDRA GALE**

**ORDER
(Subsection 127(1))**

WHEREAS the proceeding in this matter was commenced by a Statement of Allegations dated March 12, 2009 and a Notice of Hearing dated March 13, 2009;

AND WHEREAS following a hearing on the merits to address the allegations against the respondents Donald Iain Buchanan ("Buchanan") and Lisa Buchanan only, the Ontario Securities Commission (the "Commission") issued its Reasons and Decision on November 25, 2010;

AND WHEREAS we are of the opinion that it is in the public interest to make the following orders against Buchanan and Lisa Buchanan pursuant to subsection 127(1) of the Act;

IT IS ORDERED THAT:

1. With respect to Buchanan:

- (a) pursuant to clause 2 of subsection 127(1) of the Act, Buchanan is prohibited from trading in securities permanently, except that he may trade securities for the account

- of any registered retirement savings plans and/or any registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:
- (i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;
 - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
 - (iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only (and he must close any trading accounts that are not in his name only);
- (b) pursuant to clause 2.1 of subsection 127(1) of the Act, Buchanan is prohibited from acquiring securities permanently, except that he may trade securities for the account of any registered retirement savings plans and/or any registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, on and subject to the conditions referred to in paragraphs 1(a)(i) to (iii) of this order;
- (c) pursuant to clause 3 of subsection 127(1) of the Act, exemptions in Ontario securities law (as defined in the Act) do not apply to Buchanan permanently, except as necessary to permit the trading authorized under paragraphs 1(a) or (b) of this order;
- (d) pursuant to clause 6 of subsection 127(1) of the Act, Buchanan is reprimanded;
- (e) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act, Buchanan is ordered to resign any positions he holds as a director or officer of any issuer, registrant or investment fund manager;

- (f) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Buchanan is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
- (g) pursuant to clause 10 of subsection 127(1) of the Act, Buchanan shall disgorge to the Commission \$352,000 obtained as a result of his non-compliance with Ontario securities law;
- (h) pursuant to clause 9 of subsection 127(1) of the Act, Buchanan shall pay to the Commission an administrative penalty of \$300,000 as a result of his non-compliance with Ontario securities law; and
- (i) the amounts referred to in each of paragraphs 1(g) and (h) of this order shall be allocated by the Commission to or for the benefit of third parties, including Ontario investors who lost money as a result of investing in the Gold Quest International and Harmony Club Inc. securities that were addressed in this proceeding, as permitted by subsection 3.4(2)(b) of the Act; and

2. With respect to Lisa Buchanan:

- (a) pursuant to clause 2 of subsection 127(1) of the Act, Lisa Buchanan is prohibited from trading in securities permanently, except that she may trade securities for the account of any registered retirement savings plans and/or any registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which she and/or her spouse have sole legal and beneficial ownership, provided that:
 - (i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;
 - (ii) she does not own legally or beneficially (in the aggregate, together with her spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

- (iii) she carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in her name only (and she must close any trading accounts that are not in her name only);
- (b) pursuant to clause 2.1 of subsection 127(1) of the Act, Lisa Buchanan is prohibited from acquiring securities permanently, except that she may trade securities for the account of any registered retirement savings plans and/or any registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which she and/or her spouse have sole legal and beneficial ownership on and subject to the conditions referred to in paragraph 2(a)(i) to (iii) of this order;
- (c) pursuant to clause 3 of subsection 127(1) of the Act, exemptions in Ontario securities law (as defined in the Act) do not apply to Lisa Buchanan permanently, except as necessary to permit the trading authorized under paragraphs 2(a) or (b) of this order; and
- (d) pursuant to clause 6 of subsection 127(1) of the Act, Lisa Buchanan is reprimanded.

Dated at Toronto this day of November, 2010.

James E. A. Turner

Carol S. Perry

Sinan O. Akdeniz