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 ON SANCTIONS AND COSTS

Hearing:	September 13, 2010	
Decision:	January 6, 2011	
Panel:	James E. A. Turner	- Vice-Chair and Chair of the Panel
	Carol S. Perry	- Commissioner
Appearances:	Sean Horgan Carlo Rossi	- For the Ontario Securities Commission
	David C. Campbell	- For himself
	Abel Da Silva	- For himself
		No one appeared for Al-tar Energy Corp., Alberta Energy Corp., Drago Gold Corp., Eric F. O'Brien or Julian M. Sylvester

TABLE OF CONTENTS

REASONS AND DECISION ON SANCTIONS AND COSTS

I. Overview

1. History of the Proceeding

[1] This was a bifurcated hearing before 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"), to consider whether it is in the public interest to make an order with respect to sanctions and costs against 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").

[2] The hearing on the merits took place on April 20, 21, 22, 23 and 27, 2009. None of the Respondents were present or represented by legal counsel at the merits hearing. The decision on the merits was issued on June 11, 2010 (*Re Al-tar et al*. (2010), 33 O.S.C.B. 5535 (the "Merits Decision")).

[3] Following the release of the Merits Decision, we held a hearing on September 13, 2010, to consider sanctions and costs (the "Sanctions Hearing"). Staff of the Commission ("Staff") appeared at the Sanctions Hearing and made oral and written submissions and filed a Bill of Costs. Campbell and Da Silva were the only respondents who appeared at the Sanctions Hearing. They were self-represented and made oral submissions.

[4] Following the Sanctions Hearing, we requested by letter dated September 15, 2010, that Staff provide the Panel with a corrected version of the Bill of Costs, supported by time dockets setting out the hourly rates of the various individuals and a description of the work performed. On September 21, 2010, we received from Staff an Amended Bill of Costs, an Affidavit of Alice Hewitt dated September 21, 2010 and a detailed docket summary.

[5] In a letter dated September 15, 2010, we invited the parties to provide additional written submissions concerning the appropriate amount of administrative penalties. That letter stated that:

> Specifically, the Panel is considering whether to order administrative penalties against the Respondents that would exceed the amounts requested by Staff in light of the findings of the Merits Decision.

[6] On October 1, 2010 we received written submissions from Staff and Da Silva with respect to this issue. None of the other respondents provided further written submissions.

[7] These are our reasons and decision as to the appropriate sanctions and costs to be ordered against the Respondents.

2. The Non-attendance of Some of the Respondents at the Sanctions Hearing

[8] O'Brien, Sylvester, Al-tar, Alberta Energy and Drago were not present or represented by legal counsel at the Sanctions Hearing. Staff provided an Affidavit of Service of Charlene Rochman dated September 13, 2010 describing the steps that Staff took to serve all of the Respondents.

[9] 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. We are satisfied that Staff gave adequate notice of this hearing to the respondents referred to in paragraph 8 of these reasons, and that we are entitled to proceed in their absence in accordance with subsection 7(1) of the SPPA.

II. The Merits Decision

[10] The Panel concluded in the Merits Decision that:

(a) all of the Respondents traded in securities in breach of subsection 25(1)(a) of the Act;

(b) Da Silva traded in securities in breach of the Commission's order dated May 10, 2006 issued in *Re Allen* (2006), 29 O.S.C.B. 3944 ("*Allen Sanctions*") and Campbell traded in securities in breach of the Commission's temporary cease trade order dated April 13, 2006 issued in *Re Limelight* (2006), 29 O.S.C.B. 3362;

(c) all of the Respondents engaged in a distribution of securities in breach of subsection 53(1) of the Act;

(d) there were no registration or prospectus 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 of the Respondents engaged or participated in an act, practice or course of conduct relating to securities that perpetrated a fraud on a person in breach of section 126.1(b) of the Act;

(h) pursuant to section 129.2 of the Act, O'Brien is deemed not to have complied with Ontario securities law as a result of Al-tar's non-compliance and Sylvester is deemed not to have complied with Ontario securities law as a result of Alberta Energy and Drago's non-compliance; and

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

(See Merits Decision, *supra* at paras. 53 and 349)

[11] The merits Panel found that the investment scheme described in the Merits Decision "as a whole was fraudulent" (Merits Decision, *supra* at para. 343) and that "[it] was a continuous scheme that took place over an 18 month period from spring of 2006 until fall of 2007" (Merits Decision, *supra* at para. 63).

[12] During this time period, a total of $658,109.03 was raised from investors from the sale of shares of Al-tar, Alberta Energy and Drago (collectively, the "Corporate Respondents") (Merits Decision, *supra* at para. 73). Members of the public were cold-called by sales representatives (some of whom used aliases) using high pressure sales tactics to persuade them to invest. The specific amounts raised from investors by each of the Corporate Respondents is as follows:

(a) 120 investors invested a total of $615,199.50 in Al-tar (Merits Decision, *supra* at para. 116);

(b) two investors invested a total of $33,909.53 in Alberta Energy (Merits Decision, *supra* at para. 120); and

(c) three investors invested a total of $9,000 in Drago (Merits Decision, *supra* at para. 123).

[13] Funds received from investors by the Corporate Respondents were immediately transferred to bank accounts controlled by Campbell, Da Silva, O'Brien or Sylvester (collectively, the "Individual Respondents") and others (Merits Decision, *supra* at paras. 76 to 79). 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.
>
> (Merits Decision, *supra* at para. 78)

[14] Paragraph 13 of these reasons makes reference to a number of persons who were not respondents in this matter such as Zap, Carlos Da Silva, Sterling, Premium Resource and Canadian Oil Riggers. A full description of these third parties and their relationship to the Respondents and the investment scheme is provided at paragraph 75 of the Merits Decision.

[15] The merits Panel found that the Corporate Respondents did not engage in any legitimate business activities and that O'Brien, Campbell, Da Silva and Sylvester were aware of this. Specifically, it was held in the Merits Decision 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.
>
> 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.
>
> 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.
>
> (Merits Decision, *supra* at paras. 344 to 346)

III. Sanctions and Costs Requested by Staff

[16] Staff requested that the following order be made against the Respondents:

(a) an order that the Corporate Respondents cease trading in securities permanently, pursuant to subsection 127(1)2 of the Act;

(b) an order that the Individual Respondents cease trading in securities permanently, pursuant to subsection 127(1)2 of the Act;

(c) an order that the acquisition of any securities by the Respondents is prohibited permanently, pursuant to subsection 127(1)2.1 of the Act;

(d) an order that any exemptions contained in Ontario securities law do not apply to the Respondents permanently, pursuant to subsection 127(1)3 of the Act;

(e) an order reprimanding the Individual Respondents pursuant to subsection 127(1)6 of the Act;

(f) an order that the Individual Respondents resign all positions that they may hold as a director or officer of an issuer, pursuant to subsection 127(1)7 of the Act;

(g) an order that the Individual Respondents be prohibited permanently from becoming or acting as a director or officer of any issuer pursuant to clause 8 of subsection 127(1) of the Act;

(h) an order that the Individual Respondents be prohibited permanently from becoming or acting as a director or officer of any registrant pursuant to clause 8.1 of subsection 127(1) of the Act;

(i) an order that Al-tar, O'Brien, Campbell and Da Silva jointly and severally disgorge to the Commission $615,199.50 obtained as a result of their non-compliance with Ontario securities law, pursuant to subsection 127(1)10 of the Act, such amount to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, including investors who lost money as a result of the Respondent's breaches of Ontario securities law;

(j) an order that Alberta Energy, Drago, Campbell and Sylvester jointly and severally disgorge to the Commission $42,909.53 obtained as a result of their non-compliance with Ontario securities law, pursuant to subsection 127(1)10 of the Act, such amount to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, including investors who lost money as a result of the Respondent's breaches of Ontario securities law;

(k) an order requiring Sylvester to pay an administrative penalty of $100,000, pursuant to subsection 127(1)9 of the Act;

(l) an order requiring O'Brien to pay an administrative penalty of $175,000, pursuant to subsection 127(1)9 of the Act;

(m) an order requiring Da Silva to pay an administrative penalty of $250,000, pursuant to subsection 127(1)9 of the Act;

(n) an order requiring Campbell to pay an administrative penalty of $350,000, pursuant to subsection 127(1)9 of the Act; and

(o) an order requiring payment by the Respondents, on a joint and several basis, of $253,916.25 representing a portion of the costs incurred by the Commission in this matter, pursuant to section 127.1 of the Act.

[17] With respect to the amount of costs requested, Staff provided an Amended Bill of Costs which clarified that Staff is seeking $133,865.00 in costs which represents the costs incurred only during the litigation phase of this proceeding (from March to April 2009, as set out in Appendices A, B and C to Staff's Amended Bill of Costs).

[18] With respect to administrative penalties and disgorgement, Staff requested that:

> …any amounts paid to the Commission in compliance with the disgorgement and administrative penalty orders shall be allocated to or for the benefit of third parties, including investors who lost money as a result of investing in the investment schemes, in accordance with subsection 3.4(2)(b) of the Act and that such amounts are to be distributed to investors who lost money as a result of investing in the fraudulent investment schemes on such basis, on such terms and to such investors as Staff in its discretion determines to be appropriate in the circumstances.

[19] In Staff's submission, the sanctions and costs requested are appropriate in light of the Respondents' serious breaches of the Act and conduct contrary to the public interest.

IV. The Law on Sanctions

[20] Pursuant to section 1.1 of the Act, the Commission has the mandate to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets. The Supreme Court of Canada has held that the Commission's public interest mandate is neither remedial nor punitive; it is protective and preventative, and it is intended to prevent future harm to Ontario's capital markets. The Supreme Court stated that:

> … pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. … In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventative in nature and prospective in orientation.
>
> (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132, at para. 45)

[21] The Commission has stated:

> […] 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.
>
> (*Re Mithras Management Inc.* (1990), 13 O.S.C.B. 1600 ("*Mithras*") at 1610 and 1611)

[22] General deterrence is also an important factor that the Commission should consider when determining sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672, the Supreme Court of Canada stated that "[…] it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (at para. 60).

[23] In determining the appropriate sanctions in this matter, we must consider the specific circumstances and ensure that the sanctions imposed are proportionate to those circumstances (*Re M.C.J.C. Holdings* (2002), 25 O.S.C.B. 1133 at 1134).

[24] The Commission has identified the following factors as important when determining sanctions:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) the need to deter a respondent, and other like-minded individuals from engaging in similar abuses of the capital markets in the future;

(f) whether the violations are isolated or recurrent;

(g) the size of any profit or loss avoided from the illegal conduct;

(h) any mitigating factors, including the remorse of the respondent;

(i) the effect any sanction might have on the livelihood of the respondent;

(j) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(k) the reputation and prestige of the respondent;

(l) the size of any other financial sanctions imposed or any voluntary payment made by the respondent; and

(m) the shame or financial pain that any sanction would reasonably cause to the respondent.

(See: *Re M.C.J.C. Holdings*, *supra* at 1136 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746)

[25] The foregoing list of factors is not exhaustive. The applicability and importance of each factor will vary according to the facts and circumstances of each case.

V. Appropriate Sanctions in this Matter

1. Relevant Factors in the Circumstances

[26] Overall, the sanctions we impose must protect investors and Ontario capital markets by barring or restricting the Respondents from participating in those markets in the future and by sending a clear message to the Respondents and others participating in our capital markets that the type of misconduct identified in this matter will not be tolerated.

[27] In considering the factors set out above, we find the following specific factors and circumstances to be most relevant, based on the findings in the Merits Decision:

(a) The offences in this matter are very serious and include fraud. As stated in paragraph 317 of the Merits Decision:

> 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.

(b) As a result of the Respondents' misconduct, the following funds were misappropriated from investors:

- $615,199.50 was obtained by Al-tar;
- $33,909.53 was obtained by Alberta Energy; and
- $9,000 was obtained by Drago.

(c) Many of the investors (there were a total of at least 125 investors involved) lost all of their investment in Al-tar, Alberta Energy and Drago. As stated in the Merits Decision at paragraph 318:

> The Respondents were perpetrating a fraud on investors across Canada and the U.K. A total of $658,109.03 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.

(d) In carrying out their illegal activities in this matter, Campbell and Da Silva breached Commission cease trade orders previously issued against them (Merits Decision, *supra* at paras. 126 to 133).

(e) Campbell, Da Silva and Sylvester were uncooperative and lied to Staff during the investigation (Merits Decision, *supra* at paras. 243, 250, 256 to 260 and 267).

(f) Campbell and Da Silva have both previously engaged in the unregistered sale and illegal distribution of securities to the public and both have been previously sanctioned by the Commission (see *Re Limelight Entertainment Inc. et al.* (2008), 31 O.S.C.B. 1727 ("*Limelight Merits*") and *Re Allen et al.* (2005), 28 O.S.C.B. 8541 ("*Allen Merits*")). We note that Campbell and Da Silva have not complied with the sanctions orders in those cases. At the Sanctions Hearing, Da Silva acknowledged that he has not paid the outstanding administrative penalty ordered against him in the Allen matter. We also note that Campbell has not paid the $175,000 administrative penalty ordered against him in the Limelight matter.

(g) The Respondents breached multiple sections of the Act and acted contrary to the public interest (see Merits Decision, *supra* at para. 349). This conduct took place over a prolonged period of time from April 2006 to September 2007 and was structured in a "rolling nature" to avoid detection. As stated in the Merits Decision:

> 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.
>
> (Merits Decision, *supra* at para. 315)

(h) The Respondents did not acknowledge the seriousness of their illegal activities or accept responsibility for their actions.

2. Trading and Other Prohibitions

Trading and Market Prohibitions

[28] Staff submits that in the circumstances of this case, it would be appropriate to order that all of the Respondents cease trading securities permanently, be subject to a permanent

prohibition from acquiring any securities and that exemptions contained in Ontario securities law not apply to the Respondents permanently.

[29] During the hearing, Da Silva submitted that he "would like to resolve this by taking a permanent cease trade, [and] stay out of the business forever" (Hearing Transcript, September 13, 2010, at page 60 lines 2 to 4). Campbell also submitted at the hearing that he had no intention of working in the securities industry in the future. Specifically he stated:

> Now I understand that I'm a lot younger than Abel [Da Silva], I have a better chance of turning my life around, which I am. And I'm looking for jobs. And, as I said, before, I would never get back into the business.
>
> (Hearing Transcript, September 13, 2010, at page 79 at lines 12 to 15)

[30] Accordingly, Da Silva and Campbell did not contest any sanctions that would restrict their future participation in the capital markets.

[31] We find that the public interest requires that the Respondents be restrained permanently from any future participation in the capital markets. Participation in the capital markets is a privilege, not a right (*Erikson v. Ontario (Securities Commission),* [2003] O.J. No. 593 (Sup. Ct.) at para. 56). The Commission has stated that:

> There is no right of any individual to participate in the capital markets in Ontario. […] the Act provides certain exemptions which allow individuals to make certain trades without being registered, however, the OSC has explicit jurisdiction to remove the exemptions if an individual engages in conduct contrary to the letter or spirit of the Act, whether such conduct causes damage to investors or is detrimental to the integrity of the capital markets.
>
> (*Manning v. Ontario (Securities Commission)*, [1996] O.J. No. 3414 (Gen. Div.) at para. 6)

[32] The Respondents in this matter cannot be trusted to participate in the capital markets in the future. The following comments made by the Commission in another matter could be applied to the Respondents:

> [the respondent's] conduct involved no mere technical violation of the Act. Section 25 of the Act, requiring the registration of market intermediaries, is a key element of the scheme of the Act in protecting investors and the capital markets, and maintaining public confidence in those markets. [The respondent] knowingly ignored the requirements of the section and circumvented those requirements. Nor are the violation of the cease trade order and undertaking light matters. Nor is lying to investigating staff.
>
> In our view [the respondent] is not a person whom we can safely trust to participate in the capital markets in any way. We have no confidence whatsoever that if she is permitted to participate as an investor for her own account, [the respondent] will

> not once again push the envelope by engaging in conduct which is detrimental to others and abusive to our capital markets. Accordingly we order that trading in any securities by [the respondent] cease permanently.
>
> (*Re St. John* (1998), 21 O.S.C.B. 3851 at page 3867)

[33] We conclude that it is appropriate to order that all of the Respondents shall cease trading securities permanently, the acquisition of any securities by the Respondents shall be prohibited permanently, and any exemptions in Ontario securities law shall not apply permanently to the Respondents. In our view, given their egregious conduct, it is not appropriate, nor in the public interest, to provide any exception or "carve out" to permit the Individual Respondents to trade in a registered retirement savings plan. As the Commission stated in *Re Lech*, (2010), 33 O.S.C.B. 4795 at paragraph 66:

> Submissions were not made requesting a carve-out from the order proposed by Staff, to allow for restricted trading by Lech. In the present case, the conduct at issue is criminal fraud related to securities. Lech's conduct was egregious and demonstrates a serious risk to the public. In this case, it is better to err on the side of caution. We therefore find that it is neither appropriate nor in the public interest to provide such a carve-out.

Director and Officer Bans

[34] Staff also requested that all of the Individual Respondents resign all positions that they may hold as a director or officer of any issuer, and that they be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant.

[35] Campbell and Da Silva did not make any specific submissions with respect to director and officer bans.

[36] The misconduct in this matter was facilitated by or through companies controlled by certain of the Individual Respondents. O'Brien was the sole director and controlled Al-tar (Merits Decision, *supra* at paras. 324 to 327) and Sylvester was the sole director and controlled Alberta Energy and Drago (Merits Decision, *supra* at paras. 328 to 332). While Campbell and Da Silva were not directors of any of the three Corporate Respondents, they were both intimately involved in the investment scheme and investor funds were distributed to companies that they controlled (which were not respondents in this matter). Accordingly, we find that it is appropriate that all the Individual Respondents resign from all positions they may hold as a director or officer of any issuer and that they be prohibited permanently from acting as a director or officer of any issuer or registrant.

[37] Together, the permanent trading bans and permanent prohibitions on acting as a director or officer of any issuer will prevent the Respondents from participating in the capital markets and will provide general and specific deterrence to discourage others from similar conduct.

3. Administrative Penalties

[38] Staff requested that the following administrative penalties be imposed upon the Respondents:

(a) Sylvester pay an administrative penalty of $100,000;

(b) O'Brien pay an administrative penalty of $175,000;

(c) Da Silva pay an administrative penalty of $250,000; and

(d) Campbell pay an administrative penalty of $350,000.

[39] In Staff's submission, the administrative penalties imposed should reflect the egregious conduct of the Respondents referred to in paragraph 27 of these reasons and the multiple breaches of the Act perpetrated by the Respondents. As stated in *Re Sabourin* (2010), 33 O.S.C.B. 5299 ("*Sabourin Sanctions*") at para. 75:

> In our view, as a matter of principle, a respondent who commits multiple breaches of the Act should know that continuing breaches of the Act will have consequences in terms of the sanctions ultimately imposed. At the same time, however, in imposing administrative penalties we must consider the specific conduct of each Respondent and the level of administrative penalties imposed in other similar cases.

[40] Staff refers us to a number of Commission decisions that dealt with sanctions ordered in the context of boiler room operations (see for example: *Re Limelight* (2008), 31 O.S.C.B. 12080 ("*Limelight Sanctions*"); *Allen Sanctions*, *supra*; and *Sabourin Sanctions, supra*). In addition, Staff referred us to sanctions decisions of other securities commissions in Canada where fraud was involved (see for example: *Re Anderson* (2003), BCSECOM 184 and *Re Thow* (2007), BCSECOM 758). This matter is one of the first cases where the Commission is considering imposing sanctions where there has been a finding of fraud.

[41] Campbell submits that the decisions referred to us by Staff were on the high side of the spectrum and dealt with circumstances that were much more serious than this matter. Specifically, Campbell submitted at the hearing that:

> […] $600,000/700,000 is still missing from investors. You're comparing it to $41 million cases. Like it's almost like comparing it to Nortel or something. I'm not that person, okay. I don't know how to express it enough. I'm not that person. I'm not this person that is raising $41 million or even coming close to that.
>
> (Hearing Transcript, September 13, 2010, at page 70 at lines 13 to 19)

[42] In response to the Panel's letter dated September 15, 2010 requesting submissions on whether the Commission should impose higher sanctions than requested by Staff, Staff submits that:

> In making an order under subsection 127(1) the Commission is not bound by the submissions of any party to the proceeding. In contested hearings, the Commission is regularly asked to determine sanctions in the face of conflicting submissions by Staff and the respondent(s) and, in the past, the Commission has not viewed Staff's submissions as imposing an upward limit on sanctions, including the quantum of administrative penalties.

[43] We agree with that submission. A Commission Panel must make the orders under subsection 127(1) of the Act that it determines to be in the public interest. Sometimes this may require a Panel to order more severe sanctions than requested by Staff. At the same time, we concluded that it was appropriate to give the Respondents an opportunity to make submissions on that question.

[44] With respect to the quantum of any administrative penalty imposed, Campbell made the following statements:

> I don't have a job. I applied for social assistance. I'm actually going for bankruptcy. I'm talking to a trustee right now.
>
> (Hearing Transcript, September 13, 2010, at page 65 lines 16 to 19)
>
> And for the fine, I can't pay it, I'm not even sure how that would work. I really am lost here. There is no way of me actually paying that money. And I just hope you – I don't expect you to have sympathy for me because you weren't involved and you're only reading what they wrote and hearing me now for the very first time, but I just hope something could be worked out where the fine is either reduced or completely forgotten.
>
> (Hearing Transcript, September 13, 2010, at page 78 lines 14 to 21)

[45] At the hearing, Da Silva stated that he didn't have the ability to pay an administrative penalty. He said:

> So simply, I do not have the funds to -- or I don't have the funds to pay any administrative costs. My credit cards are maxed out. And if not for my dad's generosity, I'm getting free rent and stuff like that for looking after my dad, so I don't have to worry about rent or mortgages or anything like that.
>
> (Hearing Transcript, September 13, 2010, at page 59 lines 18 to 24)

[46] We give no weight to these statements. Campbell and Da Silva have lied to Staff and the Commission in the past and are not to be believed. Even if those statements are true (which we have no way of knowing), they are only one factor to be weighed in imposing sanctions.

[47] The Individual Respondents engaged in fraudulent conduct that warrants the imposition of substantial administrative penalties. We do not consider the amount of the administrative penalties requested by Staff to be sufficient to deter similar conduct in the future. In our view, to

be a deterrent, the amount of an administrative penalty must bear some reference to the amount raised from investors through the investment scheme. In addition, in cases where fraud and repetitive conduct over an extended period is involved, higher administrative penalties are necessary. In order to deter, an administrative penalty must be more than a fee for or cost of carrying out a fraudulent scheme.

[48] We find that it is in the public interest to impose a $750,000 administrative penalty on Campbell because:

(a) Campbell knowingly committed fraud in connection with the investment scheme that defrauded investors. Through his company, Canadian Oil Riggers, he misappropriated at least $217,195.93 of investor funds (Merits Decision, *supra* at paras. 77 and 78);

(b) Campbell played an integral and leading role in orchestrating and perpetrating that fraud. He was responsible for setting up the business arrangements for the Corporate Respondents and he contacted investors using an alias (Merits Decision, *supra* at paras. 238 to 253);

(c) Campbell has been sanctioned by the Commission in the past for similar illegal conduct that caused harm and financial losses to investors (see *Limelight Sanctions, supra*);

(d) Campbell's fraudulent activities occurred over an extended period of time and involved multiple and numerous breaches of the Act;

(e) Campbell blatantly and knowingly breached an outstanding Commission cease trading order in carrying out the fraudulent scheme.

[49] While we considered Campbell's submissions regarding his financial situation and ability to pay an administrative penalty, we find that the imposition of a substantial administrative penalty is required. Campbell was involved in fraudulent conduct involving all three of the Corporate Respondents. In our view, an administrative penalty of this magnitude is necessary to deter Campbell and others in the capital markets from engaging in fraudulent conduct and multiple breaches of the Act.

[50] We find that it is in the public interest to impose a $650,000 administrative penalty on Da Silva because:

(a) Da Silva knowingly committed fraud in connection with the Al-tar investment scheme that defrauded investors. He misappropriated at least $207,030 of investor funds (Merits Decision, *supra* at para. 78);

(b) Da Silva played an integral and leading role in perpetrating the Al-tar fraud (Merits Decision, *supra* at paras. 254 to 265);

(c) Da Silva's fraudulent activities occurred over an extended period of time and involved multiple and numerous breaches of the Act;

(d) Da Silva has been sanctioned by the Commission in the past for similar illegal conduct that caused harm and financial losses to investors (see *Allen Sanctions*, *supra*);

(e) Da Silva blatantly and knowingly breached an outstanding Commission cease trade order in carrying out the fraudulent scheme (see: *Allen Sanctions*, *supra*).

[51] There was no evidence that Da Silva had any involvement with the illegal activities of Alberta Energy or Drago. Accordingly, we find it appropriate to order an administrative penalty against him lower than the administrative penalty we impose on Campbell.

[52] While we considered Da Silva's submissions regarding his financial situation and ability to pay an administrative penalty, we concluded that the imposition of a substantial administrative penalty is required given his fraudulent conduct.

[53] We find that it is in the public interest to impose a $500,000 administrative penalty on O'Brien because:

(a) O'Brien committed fraud through Al-tar which misappropriated at least $615,199.50 from Al-tar investors and he received a total of approximately $147,000 (Merits Decision, *supra* at para. 76);

(b) O'Brien played an integral and leading role in perpetrating the Al-tar fraud (Merits Decision, *supra* at paras. 222 to 237);

(c) O'Brien's fraudulent activities occurred over an extended period of time and involved multiple and numerous breaches of the Act.

[54] We note that O'Brien was not involved with the activities of Alberta Energy or Drago.

[55] We find that it is in the public interest to impose a $200,000 administrative penalty on Sylvester because:

(a) Sylvester knowingly committed fraud through Alberta Energy and Drago (Merits Decision, *supra* at paras. 266 to 278). He was the sole director of both Alberta Energy and Drago, together these two companies misappropriated $42,909.53 from investors;

(b) Sylvester opened bank accounts for those companies and provided access to those accounts to Campbell (Merits Decision at paragraphs 110 to 113);

(c) Completely fabricated and false information with respect to Sylvester's experience as a senior executive and his background was included on the Alberta Energy website. In his compelled testimony, Sylvester admitted he knew nothing

of the mining industry and that the only reason he got involved in the scheme was because Campbell was going to show him how to make money.

[56] We note that Sylvester did not make cold calls to investors to solicit funds and that he did not retain any investor funds that were raised by Alberta Energy and Drago. All of those funds were immediately transferred to Campbell's company, Canadian Oil Riggers. Sylvester had no involvement with the activities of Al-tar. For these reasons, we are imposing a lower administrative penalty on Sylvester.

[57] In our view, the administrative penalties imposed on the Individual Respondents are proportionate to the specific misconduct of each of those Respondents, and will deter the Individual Respondents in this matter, and other like minded persons, from engaging in similar conduct in the future.

[58] Staff did not request that an administrative penalty be imposed on any of the Corporate Respondents. As a result, we have not done so.

4. Disgorgement

[59] The Commission has stated that the following factors are relevant considerations when contemplating a disgorgement order:

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

[60] The burden is on Staff to prove, on a balance of probabilities, the amount obtained by a respondent as a result of that respondent's non-compliance with the Act. The Commission has commented on determining that amount as follows:

> … 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 Sanctions*, *supra* at para. 49)

[61] In this case, the Respondents fraudulently obtained funds from investors in breach of Ontario securities law. The amount of the funds obtained by the Respondents from investors is ascertainable (see paras. 69 to 79 of the Merits Decision).

[62] The Commission found that the Respondents obtained a total of $658,109.03 as a result of their illegal conduct (Merits Decision, *supra* at para. 73). Al-tar obtained $615,199.50, Alberta Energy obtained $33,909.53 and Drago obtained $9,000 (Merits Decision, *supra* at paras. 69 to 72).

[63] Staff is seeking that the full amount of investor funds obtained by the three Corporate Respondents be disgorged. Staff is also requesting that the Individual Respondents involved in the fraud committed by the respective Corporate Respondents be required to disgorge on a joint and several basis the amounts obtained by the relevant Corporate Respondent. Specifically, Staff requests:

(a) an order that Al-tar, O'Brien, Campbell and Da Silva jointly and severally disgorge to the Commission $615,199.50 obtained as a result of their non-compliance with Ontario securities law, pursuant to subsection 127(1)10 of the Act, such amount to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, including investors who lost money as a result of the Respondents' breaches of Ontario securities law; and

(b) an order that Alberta Energy, Drago, Campbell and Sylvester jointly and severally disgorge to the Commission $42,909.53 obtained as a result of their non-compliance with Ontario securities law, pursuant to subsection 127(1)10 of the Act, such amount to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, including investors who lost money as a result of the Respondents' breaches of Ontario securities law.

[64] Investor funds were deposited into four bank accounts, two of which were controlled by Da Silva and two of which were controlled by Campbell. Those accounts are subject to freeze orders:

> 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.
>
> 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.
>
> (Merits Decision, *supra* at paras. 6 and 7)

[65] Staff submits that these funds should be applied to satisfy any disgorgement orders made by the Commission against Da Silva and Campbell.

[66] Staff submits that investor funds obtained as a result of the Respondents' contraventions of the Act, as determined in the Merits Decision, can be traced directly to the frozen accounts and Staff requests an order of the Commission that the funds in the accounts controlled by Da Silva and Campbell were obtained as a result of the Respondents' contraventions of the Act.

[67] At the hearing, Da Silva admitted that investor funds were deposited in the accounts controlled by him. As a mitigating factor, Da Silva submits that he did not hide the money he obtained from investors. Campbell also made submissions about the funds frozen in the bank accounts which he controlled. According to Campbell, some of those funds were from his internet café company, Zap, and from the sale of his condominium.

[68] Campbell also submits that he should not be required to disgorge the full amount that Staff requests because half of the money he received was paid to Carlos Da Silva (who was not a respondent in this matter) and funds were also paid to other third parties.

[69] In response to Campbell's submissions, Staff agrees that other persons who are not respondents received investor funds and were involved in the fraudulent scheme. However, Staff submits that due to the refusal of Campbell and the other Respondents' to cooperate, Staff was unable to obtain sufficient information about the involvement of others.

[70] The amounts credited to the accounts controlled by Campbell and Da Silva consist mostly of funds that were obtained by Campbell and Da Silva from investors as a result of their non-compliance with Ontario securities law.

[71] In our view, a disgorgement order is appropriate in this case because it ensures that none of the Respondents will benefit from their breaches of the Act and because such an order will deter them and others from similar misconduct. We find that it is appropriate to order that the Corporate Respondents disgorge the total amount of investor funds that they obtained as determined in the Merits Decision. The Individual Respondents made use of the Corporate Respondents to obtain investor funds and they immediately diverted those funds for their own purposes. Accordingly, we will order that the Individual Respondents involved in the fraudulent scheme with a particular Corporate Respondent, disgorge on a joint and several basis, the amounts to be disgorged by that Corporate Respondent. That appears to us to be the appropriate approach in the circumstances before us and was requested by Staff. Therefore we order that:

(i) Al-tar, O'Brien, Campbell and Da Silva shall jointly and severally disgorge to the Commission $615,199.50, being the amount obtained by them as a result of their non-compliance with Ontario securities law, such amount to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, including investors who lost money as a result of such Respondents' breaches of Ontario securities law; and

(ii) Alberta Energy, Drago, Campbell and Sylvester shall jointly and severally disgorge to the Commission $42,909.53, being the amount obtained by them as a result of their non-compliance with Ontario securities law, such amount to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, including investors who lost money as a result of such Respondents' breaches of Ontario securities law.

[72] We note in this respect that O'Brien was the directing mind of Al-tar and Sylvester was the directing mind of Alberta Energy and Drago.

[73] As noted in paragraph 64 of these reasons, investor funds are frozen in four bank accounts (two of which are controlled by Campbell and two of which are controlled by Da Silva). We authorize and direct Staff to take appropriate steps to obtain the funds frozen (together with interest). The funds obtained from the accounts controlled by Campbell shall be applied to the payment of the disgorgement orders made against him, and the funds obtained from the accounts controlled by Da Silva shall be applied to the payment of the disgorgement order made against him.

5. Allocation of Amounts for the Benefit of Third Parties

[74] Any amounts paid to the Commission in compliance with our administrative penalty and disgorgement orders shall be allocated to or for the benefit of third parties, including investors who lost money as a result of investing in the investment scheme, in accordance with subsection 3.4(2)(b) of the Act. These amounts are to be distributed to investors who lost money as a result of investing in the investment scheme 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.

[75] The terms of paragraph 74 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 administrative penalties and disgorgement, 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.

VI. Costs

[76] Pursuant to section 127.1 of the Act, the Commission has the discretion to order a person or company to pay the costs of an investigation (127.1(1)) and hearing (127.1(2)) if the Commission is satisfied that the person or company has not complied with the Act or has not acted in the public interest.

[77] Staff requests in their Amended Bill of Costs that the Respondents be ordered to pay, jointly and severally, a total of $133,865.00 to cover the costs incurred during the litigation phase of the hearing from March to April 2009. These costs are as follows:

(a) Senior Litigation Counsel – 417.50 hours at $205 per hour for a total of $85,587.50;

(b) Investigator – 133 hours at $185 per hour for a total of $24,605.00; and

(c) Law Clerk – 278.50 hours at $ 85 per hour for a total of $ 23,672.50.

[78] Staff states that its costs were calculated in accordance with Staff's schedule of hourly rates for various members of Staff of the Enforcement Branch. In support of this request and in response to our letter dated September 15, 2010, Staff provided us with an Amended Bill of Costs, which corrected discrepancies in their original Bill of Costs. Staff also provided detailed dockets (as required by Subrule Rule 18.1(2)(b) of the Commission's *Rules of Procedure*) supporting the figures claimed. These timesheets provided dates, numbers of hours worked and details of the tasks performed by each of the individuals listed in the Amended Bill of Costs.

[79] Staff is requesting costs relating to only one senior litigation counsel, one investigator and one law clerk. In addition, Staff's Bill of Costs excludes any time spent by students-at-law and assistants. The costs sought by Staff do not include the costs of the investigation stage of this matter and do not include the time spent preparing for and attending the Sanctions Hearing.

[80] According to Staff's Amended Bill of Costs, Staff's total costs for this proceeding were significantly higher and amounted to $657,582.50. Staff requests costs of only $133,865.00. In our view, that amount is reasonable.

[81] Accordingly, we order that the Respondents pay costs, jointly and severally, in the amount of $133,865.00. We find it appropriate to order that costs be paid by the Respondents on a joint and several basis because all of the Respondents were knowingly involved in the fraudulent investment scheme that was the subject matter of this proceeding. For greater certainty, our order for the payment of costs shall not be satisfied in whole or in part from the banks accounts referred to in paragraph 64 of these reasons.

VII. Decision on Sanctions and Costs

[82] We will issue an order substantially in the form of Schedule "A" to these reasons, giving effect to this decision. In our view, the sanctions and costs ordered are proportionate to the activities of the various Respondents in this matter and ordering such sanctions and costs is in the public interest.

Dated at Toronto this 6th day of January, 2011.

"*James E. A. Turner*"	"*Carol S. Perry*"
James E. A. Turner	Carol S. Perry

Schedule "A"

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 55,19eétage 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

ORDER
(Sections 127 and 127.1 of the *Securities Act*)

WHEREAS on February 14, 2008, a Statement of Allegations and a Notice of Hearing were issued pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), in respect of 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") (such persons are referred to as the "Respondents");

AND WHEREAS the Commission conducted the hearing on the merits in this matter on April 20, 21, 22, 23 and 27, 2009;

AND WHEREAS the Commission issued its Reasons and Decision on the merits in this matter on June 11, 2010 (the "Merits Decision");

AND WHEREAS the Commission is satisfied that the Respondents carried out a fraudulent investment scheme, have not complied with Ontario securities law and have acted contrary to the public interest, as described in the Merits Decision;

Schedule "A"

AND WHEREAS the Commission conducted a hearing with respect to the sanctions and costs to be imposed in this matter on September 13, 2010;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

(a) pursuant to clause 2 of subsection 127(1) of the Act, each of the Respondents shall cease trading in any securities permanently;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by any of the Respondents is prohibited permanently;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply permanently to any of the Respondents;

(d) pursuant to clause 6 of subsection 127(1) of the Act, each of Campbell, Da Silva, O'Brien and Sylvester are reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, each of Campbell, Da Silva, O'Brien, and Sylvester shall immediately resign all positions they may hold as a director or officer of any issuer;

(f) pursuant to clause 8 of subsection 127(1) of the Act, each of Campbell, Da Silva, O'Brien and Sylvester are prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) pursuant to clause 8.1 of subsection 127(1) of the Act, each of Campbell, Da Silva, O'Brien and Sylvester are prohibited permanently from becoming or acting as a director or officer of any registrant;

(h) pursuant to clause 9 of subsection 127(1) each of the individual respondents shall pay an administrative penalty in the following amount:

    (i) Sylvester shall pay an administrative penalty of $200,000;

    (ii) O'Brien shall pay an administrative penalty of $500,000;

    (iii) Da Silva shall pay an administrative penalty of $650,000; and

    (iv) Campbell shall pay an administrative penalty of $750,000;

Schedule "A"

(i) pursuant to clause 10 of subsection 127(1) of the Act, the Respondents shall disgorge to the Commission, the following amounts:

(i) Al-tar, O'Brien, Campbell and Da Silva shall jointly and severally disgorge to the Commission $615,199.50; and

(ii) Alberta Energy, Drago, Campbell and Sylvester shall jointly and severally disgorge to the Commission $42,909.53;

(j) the amounts referred to in paragraphs (h) and (i) of this Order shall be allocated by the Commission to or for the benefit of third parties, including investors who lost money as a result of investing in the investment scheme that was the subject matter of this proceeding, in accordance with subsection 3.4(2)(b) of the Act; and

(k) pursuant to section 127.1 of the Act, the Respondents shall jointly and severally pay $133,865.00 in costs to the Commission.

Dated at Toronto, Ontario this 6th day of January 2011.

James E. A. Turner

Carol S. Perry