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
GLOBAL PARTNERS CAPITAL, ASIA PACIFIC ENERGY, INC., 1666475 ONTARIO INC. operating as "ASIAN PACIFIC ENERGY", ALEX PIDGEON, KIT CHING PAN also known as Christine Pan, HAU WAI CHEUNG, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, GURDIP SINGH GAHUNIA also known as Michael Gahunia or Shawn Miller, BASIL MARCELLINIUS TOUSSAINT also known as Peter Beckford, and RAFIQUE JIWANI also known as Ralph Jay

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Act)

Hearing:	January 7, 2011	
Decision:	September 21, 2011	
Panel:	Paulette L. Kennedy Mary G. Condon	- Commissioner and Chair of the Panel - Commissioner
Appearances:	Carlo Rossi	- For Staff of the Ontario Securities Commission
	Leo Adler Melanie Webb	- For Gurdip Singh Gahunia
	Basil Marcellinius Toussaint	- For himself
		No one appeared for the other respondents

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. OVERVIEW

A. 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 Global Partners Capital ("**GPC**"), Asia Pacific Energy, Inc. ("**Asia Pacific**"), 1666475 Ontario Inc., operating as "Asian Pacific Energy" ("**1666475**"), Alex Pidgeon ("**Pidgeon**"), Kit Ching Pan, also known as Christine Pan ("**Pan**"), Hau Wai Cheung, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald ("**Cheung**"), Gurdip Singh Gahunia, also known as Michael Gahunia or Shawn Miller ("**Gahunia**"), Basil Marcellinius Toussaint, also known as Peter Beckford ("**Toussaint**") and Rafique Jiwani, also known as Ralph Jay ("**Jiwani**") (collectively, the "**Respondents**").

[2] The hearing on the merits in this matter took place on May 25, 28 and 29, 2009 and June 1 and 2, 2009 (the "**Merits Hearing**"), Apart from Pan and Cheung, whose counsel appeared at the end of the day on June 1, 2009 to make certain admissions on their behalf, none of the Respondents was present or represented by counsel at the Merits Hearing. The decision on the merits was rendered on August 31, 2010 (*Re Global Partners Capital* (2010), 33 O.S.C.B. 7783 (the "**Merits Decision**")).

[3] Following the release of the Merits Decision, a separate hearing to consider sanctions and costs was held on January 7, 2011 (the "**Sanctions and Costs Hearing**"). Staff of the Commission ("**Staff**") appeared at the Sanctions and Costs Hearing and made oral submissions, supported by Staff's written Sanctions Submissions, dated October 26, 2010, a Bill of Costs, the Affidavit of Yolanda Leung, sworn October 26, 2010, with respect to costs (the "**Leung Affidavit**"), a Brief of Authorities and various Affidavits of Service. Counsel for Gahunia provided written Sanctions Submissions and Materials on January 4, 2011, and appeared at the Sanctions and Costs Hearing on January 7, 2011 to make submissions on behalf of Gahunia, who was also present. Toussaint also appeared and made brief oral submissions near the end of the Sanctions and Costs Hearing. The Commission gave Toussaint an opportunity to provide written submissions, if any, by January 31, 2011, but none were provided.

B. Non-attendance at the Sanctions and Costs Hearing

[4] Apart from Gahunia and Toussaint, none of the Respondents was present or represented by legal counsel at the Sanctions and Costs Hearing or provided written submissions.

[5] 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 notice of the hearing in accordance with section 6 of the SPPA. In the present case, the Sanctions and Costs Hearing, originally scheduled for November 5, 2010, was adjourned that day and on November 17, 2010 and December 16, 2010, when it was rescheduled for January 7, 2011. Based on the Affidavits of Service

sworn by Charlene Rochman on November 5 and 16, 2010, December 15, 2010 and January 6, 2011, which were filed by Staff, we are satisfied that the Respondents were given notice of the Sanctions and Costs Hearing. Accordingly, we found that we are authorized to proceed with the Sanctions and Costs Hearing in the absence of the Respondents who did not attend, in accordance with subsection 7(1) of the SPPA.

C. Merits Decision

1. The Allegations

[6] In the Statement of Allegations dated September 4, 2008, Staff alleged that between February 2006 and October 2007, the Respondents were involved in a scheme to market and issue securities of Asia Pacific. Asia Pacific securities were sold to over 110 investors, raising a total of over US $2.2 million. The investors were primarily located in the United States, but there were also investors in the United Kingdom, the Caribbean, New Zealand, Singapore and Ontario.

[7] Staff alleged that the Respondents were involved in fraudulent and misleading activities related to the issuance of these securities, for which registration and prospectus requirements were not met, and for which the Respondents did not claim any exemptions under Ontario securities laws relating to the sale and distribution of securities, contrary to sections 25, 53 and 126.1(b) of the Act and contrary to the public interest.

[8] Staff also alleged that Gahunia and Toussaint made prohibited representations and undertakings to investors with the intention of effecting trades in Asia Pacific securities, contrary to section 38 of the Act and contrary to the public interest.

[9] Staff also alleged that Pan, Cheung, Gahunia, Toussaint and Jiwani, being directors or officers or *de facto* directors or officers of GPC, authorized, permitted or acquiesced in the contraventions of sections 25, 53, 38 and 126.1(b) of the Act by GPC or its employees, agents or representatives, contrary to subsection 122(3) of the Act; that Pidgeon and Cheung, being directors or officers or *de facto* directors or officers of Asia Pacific, authorized, permitted or acquiesced in the contraventions of sections 25, 53 and 126.1(b) of the Act by Asia Pacific or its employees, agents or representatives, contrary to subsection 122(3) of the Act; and that Pan, being a director or officer or *de facto* director or officer of 1666475, authorized, permitted or acquiesced in the contraventions of sections 25, 53 and 126.1(b) of the Act by 1666475 or its employees, agents or representatives, contrary to subsection 122(3) of the Act.

[10] Finally, Staff alleged that Gahunia and Toussaint made statements, during compelled examinations conducted by Staff, that were misleading or untrue in a material respect, contrary to subsection 122(1)(a) of the Act and contrary to the public interest.

2. The Merits Decision

[11] The Commission made the following findings in the Merits Decision:

(a) GPC breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest;

(b) Asia Pacific breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest;

(c) 1666475 breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest;

(d) Pidgeon breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a director and officer of Asia Pacific, he authorized, permitted and acquiesced in Asia Pacific's breaches of subsections 25(1)(a), 53(1) and 126.1(b) of the Act, contrary to subsection 122(3) of the Act;

(e) Cheung breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a *de facto* director and officer of GPC, he authorized, permitted and acquiesced in GPC's breaches of subsections 25(1)(a), 53(1) and 126.1(b) of the Act, contrary to subsection 122(3) of the Act. As a director and officer of Asia Pacific, he authorized, permitted and acquiesced in Asia Pacific's breaches of subsections 25(1)(a), 53(1) and 126.1(b) of the Act, contrary to subsection 122(3) of the Act;

(f) Pan breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a *de facto* director and officer of GPC, she authorized, permitted and acquiesced in GPC's breaches of subsections 25(1)(a), 53(1) and 126.1(b) of the Act, contrary to subsection 122(3) of the Act. As a director and officer of 1666475, she authorized, permitted and acquiesced in 1666475's breaches of subsections 25(1)(a), 53(1) and 126.1(b) of the Act, contrary to subsection 122(3) of the Act;

(g) Gahunia breached subsections 25(1)(a), 53(1), 38(1), 38(2), 126.1(b) and 122(1)(a) of the Act and acted contrary to the public interest;

(h) Toussaint breached subsections 25(1)(a), 53(1), 38(1), 38(2), 126.1(b) and 122(1)(a) of the Act and acted contrary to the public interest; and

(i) Jiwani breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and acted contrary to the public interest. Additionally, as a *de facto* director and officer of GPC, he authorized, permitted and acquiesced in GPC's breaches of subsections 25(1)(a), 53(1) and 126.1(b) of the Act, contrary to subsection 122(3) of the Act.

(Merits Decision, at paragraph 439)

[12] In the Merits Decision, the Commission noted that following the hearing, Staff acknowledged in their written submissions that there was insufficient evidence as against Cheung for its allegations under subsections 38(1), 38(2), 38(3) and subsection 122(3) of the Act. Accordingly, in the Merits Decision, the Commission stated: "we deem these four allegations withdrawn against Cheung" (Merits Decision, at paragraph 22).

[13] The Commission was not satisfied on a balance of probabilities that either Gahunia or Toussaint contravened subsection 38(3) of the Act. Nor was the Commission satisfied that either Gahunia or Toussaint was a *de facto* director or officer of GPC, and therefore the subsection 122(3) allegations against them in relation to GPC was dismissed.

[14] The Commission found that the investment scheme had the characteristic traits of a "boiler room" operation, including:

- creating companies falsely purporting to be engaged in legitimate business;
- establishing websites containing fabricated information to promote and give legitimacy to the company and its securities;
- creating infrastructure to support the fraudulent scheme (e.g. virtual offices, bank account, phone lines, couriers, etc.);
- developing and using sales/promotion/marketing pitches which involved call scripts, high pressure sales tactics, promises of high returns, and increased future value;
- issuing press releases containing false and/or misleading information to give legitimacy to the scheme, to show signs of progress and development, and to entice potential investors to invest and current investors to invest more; and
- transferring funds from investors to accounts controlled by the respondents or related individuals.

(Merits Decision, at paragraph 63)

[15] The Commission also found that a virtual office was established and several U.S. addresses were used to mislead investors into believing that Asia Pacific was "an established, reputable, U.S.-based company" (Merits Decision, at paragraph 434).

[16] The Commission concluded:

> All of the Respondents . . . engaged in fraud, in breach of section 126.1(b) of the Act.
>
> The investment scheme as a whole was fraudulent.
>
> Based on the evidence, it does not appear that Asia Pacific and GPC carried on a legitimate business, as communicated to investors. Their promotional material, websites and press releases contained false and misleading information about fictitious activities.
>
> The purpose of these fraudulent activities was to deceive and mislead investors in Asia Pacific securities into believing they were dealing with an established, reputable, U.S.-based company, to give the investment scheme legitimacy and to entice investors to invest or re-invest.
>
> (Merits Decision, at paragraphs 431-434)

[17] The Commission found that, between February 2006 and October 2007, over US $2.2 million was raised from over 110 investors from the sale of Asia Pacific securities (Merits Decision, at paragraph 86). The evidence established that investor funds of at least US $2.2 million were initially deposited into one of three Asia Pacific US Bank Accounts, US $2.1 million of which was transferred to the 1666475 Bank Accounts

(Merits Decision, at paragraph 92). The Commission also made the following findings with respect to the amounts paid out of the 1666475 Bank Accounts from investor funds:

- Pan's credit cards were paid off using $302,576 from the 1666475 Bank Accounts. Expenditures on these credit cards largely included personal charges for airline tickets, hotel stays, restaurant meals and purchases from various stores;
- Funds were used to pay expenses related to the activities of the investment scheme including rent, courier and utilities expenses, the purchase of lead lists and IT services;
- Gahunia received US $328,914 and $19,673 from the 1666475 Bank Accounts, paid through his company;
- Toussaint received US $90,142 and $13,612 from the 1666475 Bank Accounts, paid through his company; and
- Jiwani received US $110,686 and $20,746 from the 1666475 Bank Accounts.

[18] In concluding that the Respondents perpetrated a fraud on investors and breached subsection 126.1(b) of the Act, the Commission made the following statement:

> We find that Asia Pacific, GPC and 1666475 were solely created to defraud investors in Asia Pacific securities. We also find that the Respondents knew or reasonably ought to have known of this given the nature of their roles as integral players in the fraudulent investment scheme. The scale and magnitude of the impact on investors was significant at over US $2.2 million. We find that investors were deceived by the Respondents about the true nature of the investment they were making and as a result they have been deprived of the funds they invested in the scheme.
>
> (Merits Decision, at paragraph 363)

[19] It is this conduct that we must consider when determining the appropriate sanctions to impose in this matter.

II. THE PARTIES' SUBMISSIONS

A. Staff

[20] In their written and oral submissions, Staff requests that the following orders be made against the Respondents.

1. Trading and Other Market Prohibitions

[21] Staff seeks the following trading and market prohibitions:

(a) an order that each of the Respondents cease trading in securities permanently, with the exception that Gahunia is permitted to trade in securities in mutual funds through a registered dealer for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)), pursuant to paragraph 2 of subsection 127(1) of the Act;

(b) an order that the acquisition of any securities by each of the Respondents is prohibited permanently, with the exception that Gahunia is permitted to acquire securities in mutual funds through a registered dealer for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)), pursuant to paragraph 2.1 of subsection 127(1) of the Act;

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

(d) an order that Pidgeon, Pan, Cheung, Gahunia, Toussaint and Jiwani (collectively, the "**Individual Respondents**") be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(e) an order that each of the Individual Respondents resign any position he or she holds as a director or officer of an issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

(f) an order that each of the Individual Respondents is permanently prohibited from becoming or acting as a director or officer of any issuer, pursuant to paragraph 8 of subsection 127(1) of the Act;

(g) an order that each of the Individual Respondents is permanently prohibited from becoming or acting as a director or officer of a registrant, pursuant to paragraph 8.2 of subsection 127(1) of the Act; and

(h) an order that each of the Individual Respondents is permanently prohibited from becoming or acting as a director or officer of an investment fund manager, pursuant to paragraph 8.4 of subsection 127(1) of the Act.

[22] With respect to the permanent trading and acquisition bans set out in paragraphs (a) and (b) of Staff's requested order, Staff submits that the requested carve-out for Gahunia is consistent with the terms of Gahunia's settlement in *Re Shallow Oil & Gas Inc.* (2010), 33 O.S.C.B. 12032 ("***Shallow Oil***").

2. Disgorgement

[23] Staff seeks the following disgorgement orders:

(a) an order requiring GPC, Asia Pacific, 1666475, Pan, Cheung, Pidgeon and Jiwani jointly and severally to disgorge to the Commission $1,702,744 obtained as a result of their non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(b) an order requiring Gahunia, GPC, Asia Pacific, 1666475, Pan, Cheung, Pidgeon and Jiwani jointly and severally to disgorge to the Commission $339,628 obtained as a result of their non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act; and

(c) an order requiring Toussaint, GPC, Asia Pacific, 1666475, Pan, Cheung, Pidgeon and Jiwani jointly and severally to disgorge to the Commission

$101,087 obtained as a result of their non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act.

[24] Staff submits that the amount obtained as a result of the Respondents' non-compliance with Ontario securities law is US $2.2 million, which represents the entire amount raised from investors. The equivalent amount in Canadian dollars, based on the Bank of Canada's closing exchange rate of 0.9743 on October 11, 2007, is $2,143,460. The date of October 11, 2007 was the date when the temporary cease trade order was first issued in this matter and, in Staff's submission, the last date on which the conduct can be said to have occurred.

[25] Staff submits that GPC, Asia Pacific and 1666475 (the "**Corporate Respondents**"), and Pan, Cheung, Pidgeon and Jiwani, as the directors or officers or *de facto* directors or officers of the Corporate Respondents, should be ordered to disgorge the entire amount raised ($2,143,460) on a joint and several basis. However, as Gahunia and Toussaint were not found to be directors or officers or *de facto* directors or officers of any of the Corporate Respondents, Staff submits that they should be ordered to disgorge only those amounts they personally obtained.

3. Administrative Penalties

[26] Staff seeks the following administrative penalties against the Individual Respondents:

(a) an order requiring Pan to pay an administrative penalty of $350,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(b) an order requiring Pidgeon to pay an administrative penalty of $300,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(c) an order requiring Cheung to pay an administrative penalty of $300,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(d) an order requiring Jiwani to pay an administrative penalty of $300,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(e) an order requiring Gahunia to pay an administrative penalty of $250,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act; and

(f) an order requiring Toussaint to pay an administrative penalty of $250,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

[27] In Staff's submissions, these administrative penalties are appropriate in the circumstances because the Individual Respondents committed multiple and repeated violations of the Act, including fraud, which caused serious harm to investors. Staff submits that a substantial penalty is necessary to deter the Individual Respondents from

engaging in similar conduct in the future and to send a clear deterrent message to other market participants.

4. Allocation of Amounts for the Benefit of Third Parties

[28] Staff requests that the Commission order that any amounts paid to the Commission pursuant to 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 scheme, 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 scheme on such basis, on such terms and to such investors as Staff in its discretion determines to be appropriate in the circumstances.

5. Costs

[29] Staff presented its Bill of Costs and the Leung Affidavit in support of its request for costs. Staff states that its fees for the investigation and the hearing in this matter came to $391,842 and its disbursements came to $26,357, for a total of $418,199.

[30] Staff seeks an order requiring the Respondents to pay costs of $85,758.94, which represents only a portion of Staff's hearing costs, on a joint and several basis. Staff submits that this amount was incurred in the hearing of this matter. Staff submits that it is appropriate to order costs on a joint and several basis in this case because the Respondents knowingly engaged in what Staff describes as "a blatant fraud".

[31] Staff further submits that Gahunia and Toussaint misled Staff during Staff's investigation and that should be a factor that the Commission takes into consideration on the issue of costs.

B. The Respondents

1. Gahunia

[32] Gahunia takes no issue with the non-monetary sanctions requested by Staff.

[33] With respect to administrative penalty, Gahunia submits that the $250,000 order sought against him by Staff is excessive. He draws our attention to the Commission's finding that his role in GPC was a limited one. He was not a director or officer or *de facto* director or officer of any of the Corporate Respondents. Rather, he was initially a salesperson, and, according to his counsel, he later "rose, as much as one can rise, to being a supervisor of a couple of other salespeople" (Hearing Transcript, January 7, 2011, at p. 32). In addition, Gahunia submits that he had no control over the banking or directing of funds, but only received commissions from GPC, which was controlled by Pan and Cheung. Gahunia submits that the administrative penalty against him should be proportionate and reflect his culpability in relation to the other Individual Respondents.

[34] Counsel for Gahunia also submits that, in assessing sanctions against him, the Commission should consider Gahunia's personal circumstances. He emphasizes Gahunia's lack of sophistication with respect to financial matters as well as his obligations and responsibilities.

[35] In addition, Gahunia expresses regret and remorse with respect to his conduct and accepts the Commission's findings with respect to his part in this matter. Gahunia further

submits that he has suffered shame and humiliation as a result of the proceedings against him. As a result, he now has a deeper appreciation of the gravity of his actions, as demonstrated by the fact that he settled with Staff in the *Shallow Oil* matter and attended the Sanctions and Costs Hearing upon becoming aware of the possibility of sanctions.

[36] Gahunia submits that he and his wife are the parents of a young child. While he is currently employed, he earns a very modest income and has limited financial resources. He is not contesting the Commission's findings on amounts obtained by him or the disgorgement requested by Staff. However, Gahunia submits that the administrative penalties requested by Staff, combined with the amounts requested for disgorgement and costs, would put him into financial ruin for the rest of his life. Given his financial and personal circumstances, counsel for Gahunia submits that Gahunia has no ability to pay any amount at this time, and could only hope to pay a small fraction of the amount requested over the coming years.

[37] Counsel for Gahunia refers us to a number of Commission decisions for our determination of the appropriate amount to be ordered against Gahunia. They include *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight Sanctions and Costs***"), *Re Sabourin* (2010), 33 O.S.C.B. 5299 ("***Sabourin Sanctions and Costs***"), and *Re White* (2010), 33 O.S.C.B. 8893 ("***White Sanctions and Costs***"). Gahunia submits that an administrative penalty in the amount of $100,000 is appropriate in his case.

[38] With respect to costs, Gahunia submits that rather than being held liable on a joint and several basis, he should be ordered to pay only the actual costs attributable to him, or alternatively, that the costs should be proportionately lower having regard to his more limited involvement. Counsel for Gahunia submits that one-sixth of the costs requested by Staff, or $14,293.16, is a fair apportionment.

2. Toussaint

[39] Toussaint did not make any specific submissions with respect to the non-monetary orders requested by Staff. However, he disputes Staff's submissions on administrative penalty, disgorgement and costs.

[40] As stated at paragraphs 23 and 26 above, Staff submits that Toussaint should be ordered to pay an administrative penalty of $250,000 and to disgorge the amount he was found to have obtained – $101,087 – on a joint and several basis with the Corporate Respondents, Pidgeon, Pan, Cheung and Jiwani.

[41] Toussaint submits that he is not able to pay the requested amounts, and asks the Commission to consider monetary sanctions and costs that are lower than what were requested by Staff.

[42] Toussaint expressed remorse and apologized for his actions:

> ... I'm very sorry for what's taken place and what we became part of, but we were under the belief that it was a sanctioned project we were working under, and I do apologize.
>
> ...
>
> I would like to move on as best I can and make some sort of restitution back to the Commission if at all possible. That's all I can say.

(Hearing Transcript, January 7, 2011, at pp. 45 and 46)

[43] He also made submissions regarding his culpability:

> I see what I've read, but, I mean, we were brought into this by another individual who assured us that it was – you know, that it was as they said it was. I mean, we came in good faith, at least I did – I looked at some of the things just to make sure it was.
>
> There was an obscure regulation that I think they said they fell under and there was also, I'm trying [to] remember, also some payments they had made to some other people. And so it appeared to be a properly functioning project.
>
> (Hearing Transcript, January 7, 2011, at pp. 46 and 47)

III. THE LAW ON SANCTIONS

[44] Pursuant to section 1.1 of the Act, the Commission's mandate is 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. In *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("***Asbestos***"), the Supreme Court of Canada stated:

> … 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 preventive in nature and prospective in orientation.
>
> (*Asbestos*, *supra*, at paragraph 45)

[45] 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 Ltd.* (1990), 13 O.S.C.B. 1600, at pp. 1610 and 1611)

[46] The Commission has identified a number of factors to be considered when imposing sanctions, including:

(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 obtained 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) in light of the reputation and prestige of the respondent, whether a particular sanction will have an impact on the respondent and be effective; and

(l) the size of any financial sanctions or voluntary payment when considering other factors.

(See, for example, *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at p. 7746; *Re M.C.J.C. Holdings Inc. and Michael Cowpland* (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holdings***") at p. 1136; *White Sanctions and Costs*, *supra*, at paragraph 21)

[47] The applicability and importance of each factor will vary according to the facts and circumstances of each case.

[48] General deterrence is an important factor that the Commission should consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("***Cartaway***"), 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 preventive" (*Cartaway*, *supra*, at paragraph 60).

[49] In determining the appropriate sanctions to order, we must consider the specific circumstances in each case and ensure that the sanctions are proportionate to those circumstances (*M.C.J.C. Holdings*, *supra*, at 1134).

[50] Further, in imposing administrative penalties and disgorgement, we will consider the overall financial sanctions imposed on each respondent (*Sabourin Sanctions and Costs*, *supra*, at paragraph 59).

IV. APPROPRIATE SANCTIONS IN THIS CASE

A. Specific Sanctioning Factors Applicable in this Matter

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

[52] We find the following specific factors and circumstances to be relevant in the present case, based on the findings in the Merits Decision and the sanctioning factors set out above:

(i) The proven allegations in this matter are very serious. The Respondents breached multiple sections of the Act, including subsection 126.1(b) (the prohibition against fraud), and acted contrary to the public interest. The Commission found that the investment scheme as a whole was fraudulent (Merits Decision, at paragraph 432), and that the Corporate Respondents were created solely to defraud investors in Asia Pacific securities (Merits Decision, at paragraph 363). The Commission concluded:

> ... this matter involved several serious contraventions of the Act on a repeated basis, including fraud. We find that the investment scheme was created to perpetrate a fraud and misappropriate investor funds in an egregious manner. In this regard, the investment scheme and the conduct of the Respondents undermine the integrity of and the confidence in the Ontario capital markets, which is contrary to the public interest.
>
> (Merits Decision, at paragraph 437)

(ii) The conduct of the Respondents took place over a prolonged period of time and this conduct, which resulted in repeated violations of the Act, affected many investors. From February 2006 to October 2007, over US $2.2 million was raised from over 110 investors (Merits Decision, at paragraph 86).

(iii) As a result of the Respondents' misconduct, funds were misappropriated from investors. The Commission made the following findings:

- The Asia Pacific US Bank Accounts received over US $2.2 million of investor funds;
- The 1666475 Bank Accounts received over US $2.1 million from the Asia Pacific US Bank Accounts;
- Pidgeon received US $92,972 from the Asia Pacific US Bank Accounts;
- Pan's credit cards were paid off using $302,576 from the 1666475 Bank Accounts;
- Gahunia received US $328,914 and $19,673 from the 1666475 Bank Accounts, paid through his company;

- Toussaint received US $90,142 and $13,612 from the 1666475 Bank Accounts, paid through his company; and
- Jiwani received US $110,686 and $20,746 from the 1666475 Bank Accounts.

(Merits Decision, at paragraphs 92, 93 and 435)

(iv) Investors lost their money. As a result of Asia Pacific's reverse merger with China Bio Life Enterprises, Inc., investors lost their shareholding interests in the Asia Pacific corporate entity and were not repaid (Merits Decision, at paragraph 278);

(v) Pidgeon and Pan were uncooperative during Staff's investigation (Merits Decision, at paragraph 51);

(vi) Cheung and Jiwani cooperated with Staff during Staff's investigation. They voluntarily provided Staff with boxes of documents relating to the operations of the Corporate Respondents (Merits Decision, at paragraphs 53 to 58);

(vii) Pan and Cheung recognized the seriousness of their illegal activities and expressed remorse for their actions (Merits Decision, at paragraph 60);

(viii) Although Gahunia and Toussaint now recognize the seriousness of their illegal activities, their use of aliases at the Material Time suggests that they knew their conduct was illegal (Merits Decision, at paragraphs 76 to 82);

(ix) Gahunia and Toussaint, during their compelled examinations under oath, made misleading and untrue statements to Staff in an effort to hide their violations of Ontario securities law (Merits Decision, at paragraphs 419 to 422); and

(x) Although Gahunia and Toussaint submit that they have no ability to pay the amounts requested by Staff, they did not put forth any evidence to support their claims.

B. Trading and Other Prohibitions

1. Trading and Market Prohibitions

[53] We find that the public interest requires that the Respondents be restrained permanently from any future market participation, subject to a carve-out for Gahunia as requested by Staff.

[54] As the Commission recently stated in *Re Al-Tar Energy Corp.* (2011), 34 O.S.C.B. 447 ("***Al-Tar Sanctions and Costs***"), at paragraph 31:

> … Participation in the capital markets is a privilege, not a right (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Sup. Ct.) at paragraph 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 paragraph 6)

[55] In this case, the Respondents engaged in a fraudulent investment scheme that spanned a period of 19 months, affected over 110 investors and raised over US $2.2 million. They cannot be trusted to participate in the capital markets in the future. In our view, it is appropriate to order that each of the Respondents cease trading securities permanently, that the acquisition of any securities by the Respondents is prohibited permanently, and that any exemptions in Ontario securities law do not apply to the Respondents. Given their egregious conduct, it is in the public interest not to provide any exception or "carve-out" to permit the Individual Respondents, apart from Gahunia, to trade in a registered savings plan. As stated in *Re Lech* (2010), 33 O.S.C.B. 4795 ("***Lech***"):

> 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.
>
> (*Lech, supra*, at paragraph 66; see also *Re St. John* (1998), 21 O.S.C.B. 3851, at p. 3867)

[56] With respect to Gahunia, however, as requested by Staff, we will order a carve-out consistent with the carve-out ordered as a term of his settlement with Staff in the *Shallow Oil* matter. By order of the Commission in *Shallow Oil*, Gahunia was permanently prohibited from trading or acquiring securities, subject to a carve-out that permits him to trade in mutual funds through a registered dealer for the account of his registered savings plan. We find it is in the public interest to restrict Gahunia's participation in the capital markets on the same terms in this matter in order to protect the integrity of the Commission's settlement process.

2. Director and Officer Bans

[57] Pidgeon, Pan, Cheung and Jiwani conducted this fraudulent scheme through the Corporate Respondents of which they were directors or officers or *de facto* directors or officers. Specifically, Pidgeon and Cheung, who were directors and officers of Asia Pacific, authorized, permitted or acquiesced in Asia Pacific's contraventions of Ontario securities law (Merits Decision, at paragraphs 403 and 407); Pan, Cheung and Jiwani, who were *de facto* directors of GPC, authorized, permitted or acquiesced in GPC's breaches of Ontario securities law (Merits Decision, at paragraphs 377, 382 and 393); and Pan, who was the directing mind of 1666475, authorized, permitted or acquiesced in the contraventions of Ontario securities law by 1666475 (Merits Decision, at paragraph 413).

[58] Although Gahunia and Toussaint were not directors or officers or *de facto* directors or officers of any of the Corporate Respondents, they were actively involved in the investment scheme and investors' funds were distributed to companies that they controlled.

[59] We find that it is appropriate in this case for all the Individual Respondents to be subject to permanent director and officer bans to ensure that none of them will be put in a position of control or trust with respect to any issuer or registrant in the future.

3. Reprimand

[60] As well, we find that it is appropriate for the Individual Respondents to be reprimanded. As the Commission stated in *White Sanctions and Costs*, *supra*, at paragraph 46, the reprimand will provide strong censure of their misconduct and will impress on the public the importance of complying with the Act. The Individual Respondents are hereby reprimanded.

C. Administrative Penalties

1. Pan

[61] We find that it is in the public interest to impose a $350,000 administrative penalty on Pan, as requested by Staff, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, because:

(a) Pan was the sole director and officer of 1666475 and a directing mind of GPC, and authorized, permitted or acquiesced in the contraventions of Ontario securities law by 16666475 and GPC. She played a key role in providing the infrastructure for the investment scheme;

(b) Pan opened the two 1666475 Bank Accounts, which received investor funds, and she was the sole signatory on those accounts. She used $302,576 of investor funds paid into those accounts to pay personal expenses and expenses of the Corporate Respondents which she knew did not have legitimate business purposes;

(c) Pan played an integral and leading role in orchestrating and perpetrating the fraudulent scheme. She was aware that Asia Pacific was engaging in fraudulent acts that would deprive investors of their funds;

(d) Pan's fraudulent acts deprived investors of funds they were induced by deceit to invest in Asia Pacific, and as a result, investors lost over US $2.2 million; and

(e) Pan's conduct breached subsections 25(1)(a), 53(1), 122(3) and 126.1(b) of the Act and was contrary to the public interest.

(Merits Decision, at paragraphs 139 to 146, 172 to 174, 307 to 315, 374 to 377, 410 to 413, and 439)

[62] We find that the imposition of a substantial administrative penalty is required with respect to Pan, in order to protect the public, given her fraudulent conduct involving two of the Corporate Respondents and the disbursement of investor funds under her direction.

2. Cheung

[63] We find that it is in the public interest to impose a $300,000 administrative penalty on Cheung, as requested by Staff, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, because:

(a) Cheung was a *de facto* director or officer of GPC and a director and officer of Asia Pacific, and authorized, permitted or acquiesced in the contraventions of Ontario securities law by GPC and Asia Pacific. Cheung signed the Asia Pacific share certificates, arranged for the design and maintenance of the website, and was responsible for setting up the infrastructure for the Asia Pacific investment scheme. He was a directing mind behind Asia Pacific and GPC and played an integral role in orchestrating and perpetrating the fraud;

(b) Cheung knowingly committed fraud in connection with the Asia Pacific investment scheme that defrauded investors; and

(c) Cheung's conduct breached subsections 25(1)(a), 53(1), 122(3) and 126.1(b) of the Act and was contrary to the public interest.

(Merits Decision, at paragraphs 147 to 150, 172 to 174, 316 to 323, 378 to 382, 404 to 407, and 439)

[64] We find that the imposition of a substantial administrative penalty is required with respect to Cheung, in order to protect the public, given his fraudulent conduct involving two of the Corporate Respondents.

3. Pidgeon

[65] We find that it is in the public interest to impose a $300,000 administrative penalty on Pidgeon, as requested by Staff, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, because:

(a) Pidgeon was a director and officer of Asia Pacific, and authorized, permitted or acquiesced in Asia Pacific's contraventions of Ontario securities law;

(b) Pidgeon opened the Asia Pacific US Bank Accounts and was the sole signatory for those accounts. He "authorized, on a consistent and regular basis", transfers of investor funds to an account held by 1666475 in Canada, when he knew or reasonably ought to have known that the transfers of investor funds had no legitimate business purposes;

(c) Pidgeon misappropriated US $92,972 of investor funds from the Asia Pacific US Bank Accounts;

(d) Pidgeon knew or reasonably ought to have known that the over $2.2 million of investor funds raised by Asia Pacific was not being used for legitimate business purposes; the Commission concluded that Pidgeon was aware that Asia Pacific was engaging in fraudulent acts that would deprive investors of their funds;

(e) Pidgeon signed and executed Asia Pacific's reverse merger with China Bio Life Enterprises, Inc. as President and Director of Asia Pacific. The reverse merger deprived investors of their shareholding interests in Asia Pacific;

(f) Pidgeon's fraudulent acts deprived investors of funds they were induced by deceit to invest in Asia Pacific, and as a result, investors lost over US $2.2 million; and

(g) Pidgeon's conduct breached subsections 25(1)(a), 53(1), 122(3) and 126.1(b) of the Act and was contrary to the public interest.

(Merits Decision, at paragraphs 133 to 138, 172 to 174, 295 to 306, 397 to 403, and 439)

[66] Pidgeon played an important role in the investment scheme by authorizing the disbursement of investor funds. We find that the imposition of a substantial administrative penalty is required with respect to Pidgeon, in order to protect the public, given his conduct involving one of the Corporate Respondents.

4. Jiwani

[67] We find that it is in the public interest to impose a $300,000 administrative penalty on Jiwani, as requested by Staff, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, because:

(a) Jiwani was responsible for setting up the business arrangements for GPC and ran the GPC offices. He had a senior role at GPC and played an integral role in its day-to-day operation, including getting sales updates and bank account information. He was a *de facto* director or officer of GPC and authorized, permitted or acquiesced in GPC's contraventions of Ontario securities law;

(b) Jiwani received US $110,686 and $20,746, which included 5 percent of all sales of Asia Pacific sales, for his involvement in the scheme;

(c) "Jiwani knew or reasonably ought to have known that designing promotional brochures, which were false and fabricated, publishing false press releases and holding back 'loads' until a press release was properly published all deceived investors and enticed them to invest or re-invest in Asia Pacific securities" (Merits Decision, at paragraph 359);

(d) Jiwani's fraudulent acts deprived investors of funds they were induced by deceit to invest in Asia Pacific securities. As a result of these acts, investors lost over US $2.2 million. Jiwani knew or reasonably ought to have known of the fraudulent nature of the scheme; and

(e) Jiwani's conduct breached subsections 25(1)(a), 53(1), 122(3) and 126.1(b) of the Act and was contrary to the public interest.

(Merits Decision, at paragraphs 162 to 167, 172 to 174, 349 to 362, 387 to 393, and 439)

[68] We find that the imposition of a substantial administrative penalty is required with respect to Jiwani, in order to protect the public, because of his fraudulent conduct and integral role in managing the operational aspects of GPC.

5. Gahunia

[69] Although Staff requests an administrative penalty of $250,000 against Gahunia, we find that it is in the public interest to impose a $100,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act. We find that a substantial penalty is appropriate because:

(a) Gahunia solicited investors, using a script, and sometimes using an alias. Later, as sales manager, he trained the qualifiers, ensuring that they used the script. He held himself out to investors as being an officer of GPC or Asia Pacific. He played an integral role in soliciting investors;

(b) Gahunia engaged in high pressure sales tactics and repeatedly made prohibited representations and gave prohibited undertakings to investors that Asia Pacific would repurchase all shares sold to investors at a fixed price of US $1.25 per share if the initial listing price of Asia Pacific shares at the time of the IPO was less than US $1.50;

(c) Gahunia committed fraud in connection with the Asia Pacific investment scheme that defrauded investors and received US $328,914 and $19,673 of investor funds;

(d) Gahunia misled Staff during Staff's investigation about his use of aliases;

(e) Gahunia's conduct breached subsections 25(1)(a), 38(1), 38(2), 53(1), 122(1)(a) and 126.1(b) of the Act and was contrary to the public interest.

(Merits Decision, at paragraphs 151 to 157, 172 to 174, 198 to 200, 204 to 207 and 219 to 224, 229 to 233, 324 to 335, 419 to 420, and 439)

[70] However, Gahunia was not a director or officer or *de facto* director or officer of any of the Corporate Respondents, and his involvement was more limited than that of Pan, Cheung, Pidgeon and Jiwani. We find it appropriate to impose a lower administrative penalty than that requested by Staff.

[71] Gahunia claims that he does not have the ability to pay an administrative penalty. However, as he provided no evidence about his financial circumstances during the Sanctions and Costs Hearing, we place limited weight on this claim.

[72] We find that the imposition of an administrative penalty of $100,000 is required with respect to Gahunia, in order to protect the public.

6. Toussaint

[73] Although Staff requests an administrative penalty of $250,000 against Toussaint, we find that it is in the public interest to impose a $100,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act. We find that a substantial penalty is appropriate because:

(a) Toussaint played an integral role in soliciting investors, sometimes using an alias. He held himself out to investors as being an officer of GPC or Asia Pacific;

(b) Toussaint engaged in high pressure sales tactics when he made prohibited representations and undertakings to investors that Asia Pacific would repurchase

all shares sold to investors at a fixed price of US $1.25 per share if the initial listing price of Asia Pacific shares at the time of the IPO was less than US $1.50;

(c) Toussaint provided false and deceitful information to investors, and received US $90,142 and $13,612 of investor funds for his role in the scheme. He committed fraud in connection with the Asia Pacific investment scheme that defrauded investors (Merits Decision, at paragraph 160);

(d) Toussaint misled Staff during his compelled examination by denying that he sold Asia Pacific securities; and

(e) Toussaint's conduct breached subsections 25(1)(a), 38(1), 38(2), 53(1), 122(1)(a) and 126.1(b) of the Act and was contrary to the public interest.

(Merits Decision, at paragraphs 158 to 161, 172 to 174, 201 to 207, 225 to 233, 336 to 348, 421 to 422, and 439)

[74] However, Toussaint was not a director or officer or *de facto* director or officer of any of the Corporate Respondents, and his involvement was more limited than that of Pan, Cheung, Pidgeon and Jiwani. We find it appropriate to impose a lower administrative penalty than what was requested by Staff.

[75] Toussaint claims that he does not have the ability to pay the administrative penalty requested by Staff. However, as he provided no evidence about his financial circumstances during the Sanctions and Costs Hearing, we place limited weight on this claim.

[76] We find that the imposition of an administrative penalty of $100,000 is required with respect to Toussaint, in order to protect the public.

7. The Corporate Respondents

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

D. Disgorgement

[78] Subsection 127(1)10 of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained" as a result of the non-compliance. As the Commission stated in *Sabourin Sanctions and Costs*, *supra*, at paragraph 65, the disgorgement remedy is intended to ensure that respondents do not retain any financial benefit from their breaches of the Act and to provide specific and general deterrence.

[79] The Commission in *Limelight Sanctions and Costs* set out a list of non-exhaustive factors to be considered when contemplating issuing a disgorgement order:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

(*Limelight Sanctions and Costs*, *supra*, at paragraph 52)

[80] 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:

> … 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 and Costs*, *supra*, at paragraph 49)

[81] We find this an appropriate case for a disgorgement order. The Respondents' fraudulent conduct was egregious and abusive of Ontario's capital markets. The fraud caused serious harm to investors, who lost over US $2.2 million in the scheme. In the Merits Decision, the Commission made the following findings as to the amounts "obtained" by the Individual Respondents as a result of their fraudulent non-compliance with Ontario securities law:

- US $2.2 million was initially deposited into one of three Asia Pacific US Bank Accounts in the United States, US $2.1 million of which was transferred to the 1666475 Bank Accounts;
- Pidgeon received US $92,972 from the Asia Pacific US Bank Accounts;
- Pan's credit cards were paid off using $302,576 from the 1666475 Bank Accounts;
- Gahunia received US $328,914 and $19,673 from the 1666475 Bank Accounts, paid through his company;
- Toussaint received US $90,142 and $13,612 from the 1666475 Bank Accounts, paid through his company; and

- Jiwani received US $110,686 and $20,746 from the 1666475 Bank Accounts.

(Merits Decision, at paragraphs 89 to 94, 435)

[82] At the Sanctions and Costs Hearing, Toussaint stated that believes the amount the Commission found he obtained "is a little bit high" (Hearing Transcript, p. 47). However, our role is to determine appropriate sanctions and costs based on the findings made by the Commission after hearing the evidence and submissions of the parties in the Merits Hearing, not to reconsider those findings. We rely on the Commission's findings set out at paragraph 435 of the Merits Decision in determining the amount to be disgorged from Toussaint.

[83] The Commission did not make a finding that Cheung obtained investor funds personally. However, as stated at paragraph 63 above, the Commission found that Cheung was a directing mind of Asia Pacific and GPC and played an integral role in orchestrating and perpetrating the fraud. We find that Cheung, along with Pidgeon, Pan, and Jiwani, and the Corporate Respondents of which they were directors or officers or *de facto* directors or officers, acted in concert with a common purpose in perpetrating the fraudulent scheme.

[84] We find that Pidgeon, Pan, Cheung, Jiwani and the Corporate Respondents should be ordered jointly and severally to disgorge the entire amount they obtained as a result of their non-compliance with Ontario securities law – $1,702,744. The entire scheme was fraudulent. Each of Pidgeon, Pan, Cheung and Jiwani was a director or officer or *de facto* director or officer of one or more of the Corporate Respondents, and authorized, permitted or acquiesced in the contraventions by the Corporate Respondents of which he or she was a director or officer or *de facto* director or officer. As the Commission stated in *Limelight Sanctions and Costs*, *supra*, at paragraph 59: "individuals should not be protected or sheltered from administrative sanctions by the fact that the illegal actions they orchestrated were carried out through a corporation which they directed and controlled." We find that Pidgeon, Pan, Cheung, Jiwani and the Corporate Respondents acted in concert with a common purpose in the execution of the fraudulent scheme. Therefore, we find it appropriate, for protective purposes, to order Pan, Cheung, Pidgeon, Jiwani, GPC, Asia Pacific and 1666475 to disgorge $1,702,744 to the Commission on a joint and several basis. This amount represents the total amount obtained as a result of the Respondents' non-compliance with Ontario securities law, less the amounts personally obtained by Gahunia and Toussaint, converted into Canadian dollars.

[85] Staff does not request that Gahunia and Toussaint be made jointly and severally liable for the disgorgement order described in paragraph 84, above. Gahunia and Toussaint were not directors or officers or *de facto* directors or officers of any of the Corporate Respondents. In recognition of their distinct roles in the investment scheme, we find it appropriate that each of Gahunia and Toussaint be ordered to disgorge the amount he personally obtained as a result of his non-compliance with Ontario securities law.

[86] Accordingly, we order that Gahunia, jointly and severally with Pidgeon, Pan, Cheung, Jiwani and the Corporate Respondents, disgorge to the Commission $339,628, which represents the total amount, converted into Canadian dollars, that he obtained as a result of his non-compliance with Ontario securities law. We order that Toussaint, jointly

and severally with Pidgeon, Pan, Cheung, Jiwani and the Corporate Respondents, disgorge to the Commission $101,087, which represents the total amount, converted into Canadian dollars, that he obtained as a result of his non-compliance with Ontario securities law.

E. Allocation of Amounts for the Benefit of Third Parties

[87] 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 administrative penalty be allocated to or for the benefit of third parties. In this case, Staff seeks an order that the amounts paid be allocated to or for the benefit of third parties, including investors who lost money as a result of investing in the investment scheme.

[88] Investors lost over US $2.2 million as a result of the fraud perpetrated by the Respondents in this case, and we find it appropriate to make an allocation order in the terms requested by Staff. We agree with the Commission's approach set out in *Sabourin Sanctions and Costs*, *supra*, at paragraphs 87 to 89:

> [87] As noted above, it appears likely that investors have lost most of their investment in the investment schemes sold by the Respondents and there is little hope for any recovery. While we consider it to be in the public interest to order disgorgement of amounts obtained and the payment of substantial administrative penalties, it would be unfair and inappropriate, in our view, if those orders had the effect of reducing the amounts that investors are able to recover from any of the Respondents.
>
> [88] Accordingly, any amounts paid to the Commission in compliance with our 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. Such 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.
>
> [89] The terms of paragraph 88 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 penalties, 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.

V. COSTS

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

[90] Staff requests that the Respondents pay, on a joint and several basis, a total of $85,758.94 representing the costs incurred in relation to the Merits Hearing in this matter. Staff has submitted a bill of costs supporting that amount. We accept that the amount claimed by Staff represents only a portion of Staff's costs related to this proceeding.

[91] In response to Gahunia's submission that he should not be jointly and severally liable with the other Respondents for costs, considering his lesser role in the scheme, Staff relies on *Al-Tar Sanctions and Costs*, *supra*, at paragraph 81, where the Commission said: "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."

[92] Although, at the Sanctions and Costs Hearing, Gahunia and Toussaint expressed regret about their involvement in the scheme, they misled Staff during the investigation in an attempt to hide their involvement. In their role as salesmen, they used high pressure sales tactics and made prohibited representations in order to entice investors to invest or re-invest. Their conduct was egregious. However, although all the Respondents were engaged in the fraudulent investment scheme, we find it appropriate to recognize that neither Gahunia nor Toussaint was a director or officer or *de facto* director or officer of any of the Corporate Respondents. Therefore, we find it appropriate to order Gahunia and Toussaint to pay costs of $14,000 each.

[93] Jiwani and Cheung played integral roles in the fraudulent investment scheme. However, they voluntarily provided Staff with numerous documents during the investigation: Jiwani provided five boxes of documents and Cheung provided three boxes, as described in paragraphs 53 to 58 of the Merits Decision. Therefore, we find it appropriate to order Jiwani and Cheung to pay costs of $10,000 each.

[94] We note that Pan and Cheung, through counsel, appeared just before the close of the evidence in the Merits Hearing, admitted to some of Staff's allegations and expressed regret about what happened, as stated at paragraphs 59 and 60 of the Merits Decision. Considering the central roles played by Pan and Cheung in the fraudulent investment scheme, and the moderate costs award requested by Staff, we find it appropriate to order Pan, Pidgeon and the Corporate Respondents to pay the remaining costs of $37,758.94 on a joint and several basis.

VI. DECISION ON SANCTIONS AND COSTS

[95] In our view, the sanctions and costs ordered are proportionate to the activities of the various Respondents in this matter and will deter the Respondents and like-minded people from engaging in future conduct that violates securities law.

[96] We find that it is in the public interest to make the following orders:

(a) Pursuant to paragraph 2 of subsection 127(1) of the Act, each of GPC, Asia Pacific, 1666475, Pidgeon, Pan, Cheung, Gahunia, Toussaint and Jiwani shall cease trading securities permanently, with the exception that Gahunia is permitted to trade in securities in mutual funds through a registered dealer for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada));

(b) Pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of securities by each of GPC, Asia Pacific, 1666475, Pidgeon, Pan, Cheung, Gahunia, Toussaint and Jiwani is prohibited permanently, except in the case of Gahunia, to allow the trading in securities permitted by and in accordance with paragraph (a) of this order;

(c) Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply permanently to each of GPC, Asia Pacific, 1666475, Pidgeon, Pan, Cheung, Gahunia, Toussaint and Jiwani;

(d) Pursuant to paragraph 6 of subsection 127(1) of the Act, Pidgeon, Pan, Cheung, Gahunia, Toussaint and Jiwani are reprimanded;

(e) Pursuant to paragraph 7 of subsection 127(1) of the Act, each of Pidgeon, Pan, Cheung, Gahunia, Toussaint and Jiwani shall immediately resign any position he or she holds as a director or officer of an issuer;

(f) Pursuant to paragraph 8 of subsection 127(1) of the Act, each of Pidgeon, Pan, Cheung, Gahunia, Toussaint and Jiwani is prohibited permanently from becoming or acting as a director or officer of an issuer;

(g) Pursuant to paragraph 8.2 of subsection 127(1) of the Act, each of Pidgeon, Pan, Cheung, Gahunia, Toussaint and Jiwani is prohibited permanently from becoming or acting as a director or officer of a registrant;

(h) Pursuant to paragraph 8.4 of subsection 127(1) of the Act, each of Pidgeon, Pan, Cheung, Gahunia, Toussaint and Jiwani is prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

(i) Pursuant to paragraph 9 of subsection 127(1) of the Act, each of Pidgeon, Pan, Cheung, Gahunia, Toussaint and Jiwani shall pay an administrative penalty in the following amounts:

    (i) Pan shall pay an administrative penalty of $350,000;

    (ii) Pidgeon, Cheung, and Jiwani shall each pay an administrative penalty of $300,000; and

    (iii) Gahunia and Toussaint shall each pay an administrative penalty of $100,000;

(j) Pursuant to paragraph 10 of subsection 127(1) of the Act, the Respondents shall disgorge to the Commission the following amounts:

(i) GPC, Asia Pacific, 1666475, Pan, Cheung, Pidgeon and Jiwani shall jointly and severally disgorge to the Commission $1,702,744;

(ii) Gahunia and GPC, Asia Pacific, 1666475, Pan, Cheung, Pidgeon and Jiwani shall jointly and severally disgorge to the Commission $339,628; and

(iii) Toussaint and GPC, Asia Pacific, 1666475, Pan, Cheung, Pidgeon and Jiwani shall jointly and severally disgorge to the Commission $101,087;

(k) The amounts referred to in paragraphs (i) and (j) 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;

(l) Pursuant to section 127.1 of the Act, the Respondents shall pay the following amounts towards the Commission's hearing costs in this matter:

(i) Cheung and Jiwani shall each pay costs of $10,000;

(ii) Gahunia and Toussaint shall each pay costs of $14,000; and

(iii) GPC, Asia Pacific, 1666475, Pidgeon and Pan shall jointly and severally pay costs of $37,758.94.

[97] We will issue a separate order giving effect to our decision on sanctions and costs.

DATED at Toronto this 21st day of September, 2011.

"Paulette L. Kennedy" *"Mary G. Condon"*

Paulette L. Kennedy Mary G. Condon