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 -

CARLTON IVANHOE LEWIS, MARK ANTHONY SCOTT, SEDWICK HILL, LEVERAGE PRO INC., PROSPOREX INVESTMENT CLUB INC., PROSPOREX INVESTMENTS INC., PROSPOREX LTD., PROSPOREX INC., PROSPOREX FOREX SPV TRUST, NETWORTH FINANCIAL GROUP INC., and NETWORTH MARKETING SOLUTIONS

SANCTIONS DECISION

Hearing:	December 21, 2011	
Decision:	March 2, 2012	
Panel:	James D. Carnwath, QC	- Commissioner and Chair of the Panel
	Margot C. Howard, CFA	- Commissioner
Appearances:	Helen Daley	- For Staff of the Commission
	Carlton Ivanhoe Lewis	- Self-Represented
	Mark Anthony Scott	- Self-Represented
	Sedwick Hill	- Self-Represented
	LeveragePro Inc.	- Not represented
	Prosporex Investment Club Inc.	- Not represented
	Prosporex Investments Inc.	- Not represented
	Prosporex Ltd.	- Not represented
	Prosporex Inc.	- Not represented
	Prosporex Forex SPV Trust	- Not represented
	Networth Financial Group Inc.	- Not represented
	Networth Marketing Solutions	- Not represented

TABLE OF CONTENTS

I. INTRODUCTION..........1
II. BACKGROUND..........1
III. STAFF SUBMISSIONS..........2
IV. SUBMISSIONS BY THE INDIVIDUAL RESPONDENTS..........4
V. ANALYSIS OF THE LAW ON SANCTIONS..........4
VI. APPLICATION OF THE LAW TO THE FACTS OF THIS CASE..........6

I. INTRODUCTION

[1] This sanctions hearing follows a hearing on the merits terminating in our Reasons for Decision dated October 27, 2011 (the "**Decision**").

[2] Commission Staff seek sanctions against Carlton Ivanhoe Lewis ("**Mr. Lewis**"), Mark Anthony Scott ("**Mr. Scott**"), Sedwick Hill ("**Mr. Hill**") (collectively, the "**Individual Respondents**"). Staff also seek sanctions against LeveragePro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Networth Financial Group Inc. and Networth Marketing Solutions (collectively, the "**Corporate Respondents**"). The Individual and Corporate Respondents are referred to globally as "the Respondents".

[3] In the Decision, we found:

(a) Each of the Respondents contravened section 126.1(b) of the *Act* by engaging in fraudulent conduct by perpetrating a fraud on both individuals (*viz*, their investors) and a company (AGF Trust).

(b) All Respondents had engaged in the unregistered trading of securities contrary to section 25(1)(a) of the *Act*.

(c) All Respondents had engaged in an illegal distribution of securities, in contravention of section 53(1) of the *Act*.

(d) All Respondents had acted contrary to the public interest.

II. BACKGROUND

[4] Over 1,700 individual investors were encouraged and persuaded by the Respondents to borrow over $25 million from AGF Trust under its RSP loan program. Investors were told funds would be placed in forex-based investment contracts promoted by the Respondents.

[5] AGF Trust advanced the $25 million on the understanding that the Respondents' investor clients place the money in RSP investments. The advanced funds were never directed to an RSP plan created to hold qualified investments.

[6] Of these loans we found that approximately $20 million was directed to uses having no connection with forex investment contracts. Of the $20 million, approximately $5.3 million of the funds was paid to investors as "returns" on their forex investment contracts. There were no such returns; no profits were ever obtained by the Respondents through forex investing.

[7] We found the Respondents made these returns to cause investors to increase their position and to attract new investors by demonstrating a record of success.

[8] We found approximately $14.7 million was either:

(a) directed to the Individual Respondents;

(b) paid as incentives to persons whom the Respondents used to assist in their fraud; or

(c) transferred to offshore locations for purposes never disclosed by the Respondents.

[9] We found that Mr. Lewis received $0.92 million, Mr. Scott $1.5 million and Mr. Hill $3.4 million, totalling approximately $5.8 million.

[10] We found approximately $2.3 million went to pay commissions and office expenses of the Respondents in furtherance of the fraud.

[11] There was no explanation in the evidence for the approximately $6.6 million that is unaccounted for.

III. STAFF SUBMISSIONS

The Corporate Respondents

[12] Staff seeks the following sanctions against the Corporate Respondents:

- an order that all of the Corporate Respondents be permanently prohibited from becoming registered under the *Act*, pursuant to clause 1 of section 127(1) of the *Act*;
- an order that all Corporate Respondents cease trading in securities permanently, pursuant to clause 2 of section 127(1);
- an order that acquisition of any securities by each of the Corporate Respondents is prohibited permanently pursuant to clause 2.1 of section 127(1); and
- an order that any exemptions contained in Ontario securities law do not apply to each of the Corporate Respondents permanently pursuant to clause 3 of section 127(1).

The Individual Respondents

[13] Staff seeks the following sanctions against the Individual Respondents:

- an order that Messrs. Lewis, Scott and Hill be permanently prohibited from becoming registered under the *Act*, pursuant to clause 1 of section 127(1) of the *Act*;

- an order that Messrs. Lewis, Scott and Hill cease trading in securities permanently pursuant to clause 2 of section 127(1);

- an order that the acquisition of any securities by Messrs. Lewis, Scott and Hill are prohibited permanently pursuant to clause 2.1 of section 127(1);

- an order that any exemptions contained in Ontario securities law do not apply to Messrs. Lewis, Scott and Hill permanently pursuant to clause 3 of section 127(1);

- an order reprimanding Messrs. Lewis, Scott and Hill pursuant to clause 6 of subsection 127(1);

- an order that Messrs. Lewis, Scott and Hill resign their positions that they may hold as a director or officer of an issuer, registrant or investment fund manager pursuant to clauses 7, 8.1 and 8.3 of section 127(1);

- an order that Messrs. Lewis, Scott and Hill are prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, pursuant to clauses 8, 8.2 and 8.4 of section 127(1);

- an order that Messrs. Lewis, Scott and Hill are prohibited permanently from becoming or acting as a registrant, investment fund manager or as a promoter, pursuant to clause 8.5 of section 127(1);

- an order requiring Messrs. Lewis, Scott and Hill to each pay an administrative penalty of $1,000,000 pursuant to clause 9 of section 127(1);

- an order requiring each of them to disgorge the sums personally appropriated, as follows:

  (a) Mr. Lewis to disgorge to the Commission the amount of $0.92 million dollars;

  (b) Mr. Scott to disgorge to the Commission the amount of $1.5 million dollars; and

  (c) Mr. Hill to disgorge to the Commission the amount of $3.4 million dollars.

- an order that all disgorged amounts are to be applied for the benefit of third parties under section 3.4(2)(b) of the *Act*.

- an order requiring Messrs. Lewis, Scott and Hill to each pay one-third of $163,145, on account of the costs incurred in this matter pursuant to section 127.1.

IV. SUBMISSIONS BY THE INDIVIDUAL RESPONDENTS

[14] Each of Messrs. Lewis, Scott and Hill addressed the Panel. A common theme in their submissions was that each attempted lay the blame for the fraudulent activity on the other two. Indeed Messrs. Lewis and Hill suggested to the Panel that, they too, were victims. We reject any suggestion that there were any victims in this fraud other than AGF Trust and the individual investors.

[15] Mr. Lewis submitted that funds appropriated by him were for office expenses in the "back office" in Jamaica. No evidence was submitted to support the actual expenditure of funds for the Jamaica office.

[16] Mr. Scott repeated his submission made in the course of the Hearing on the Merits to the effect that Staff acted improperly in receiving evidence from employees at the Prosporex office. He made no submissions on the appropriateness of the sanctions sought by Staff. Mr. Hill submitted letters in support from many of his clients over the preceding years. All spoke highly of Mr. Hill; however, many professed to know nothing about the difficulties he was in with the OSC. Mr. Hill stressed the financial difficulty he found himself in and the effect that Staff's requested sanctions would have on him.

[17] We find the attempts of each of the Individual Respondents to blame the remaining two understandable, but not persuasive. We find that all three Respondents played an important part in their respective roles in the fraud. We cannot conclude that one was more or less culpable than another.

V. ANALYSIS OF THE LAW ON SANCTIONS

[18] 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. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] S.C.R. 132 ("**Asbestos**"), the Commission's public interest mandate is neither remedial nor punitive; instead, it is protective and preventive, and it is intended to prevent future harm to Ontario's capital markets (at para. 42). Specifically:

> … the above interpretation is consistent with the scheme of enforcement in the Act. The enforcement techniques in the Act span a broad spectrum from purely regulatory or administrative sanctions to serious criminal penalties. The administrative sanctions are the most frequently used sanctions and are grouped together in s. 127 as "Orders in the public interest". Such orders are not punitive: *Re Albino* (1991), 14 O.S.C.B. 365. Rather, the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the

integrity of the capital markets: *Re Mithras Management Ltd.*(1990), 13 O.S.C.B. 1600. In contradistinction, it is for the courts to punish or remedy past conduct under ss. 122 and 128 of the Act respectively: see D. Johnston and K. Doyle Rockwell, *Canadian Securities Regulation* (2nd ed. 1998), at pp. 209-11.

…

… 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 best 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 paras. 43 and 45 [emphasis added])

[19] In determining the appropriate sanctions to order in this matter, we must keep in mind the Commission's preventive and protective mandate set out in section 1.1. of the *Act*, and we must also consider the specific circumstances in this case and ensure that the sanctions are appropriate (*Re M.J.C.J. Holdings*, (2002), 25 O.S.C.B. 1133 at 1134).

[20] The case law sets out the following list of non-exhaustive factors that are important to consider when imposing 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 nor 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 gained 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;
l. the size of any financial sanctions or voluntary payment when considering other factors.

(*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1136 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746)

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

[22] Deterrence is another 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 explained that deterrence is "…an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive" (at para. 60). Further, the Supreme Court emphasized that deterrence may be specific to the respondent or general to deter the public at large:

> Deterrent penalties work on two levels. They may target society generally, including potential wrongdoers, in an effort to demonstrate the negative consequences of wrongdoing. They may also target the individual wrongdoer in an attempt to show the unprofitability of repeated wrongdoing. The first is general deterrence; the second is specific or individual deterrence: see. C. C. Ruby, *Sentencing* (5th ed. 1999). In both cases deterrence is prospective in orientation and aims at preventing future conduct.
>
> (*Cartaway*, *supra* at para. 52)

[23] As stated above, the sanctions imposed must be protective and preventive. The role of the Commission is to impose sanctions that will protect investors and the capital markets from exposure to similar conduct in the future. As articulated by the Commission in *Re Mithras Management Inc.* (1990), 13 O.S.C.B. 1600:

> … 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.
>
> (*Mithras, supra* at 1610 and 1611)
>
> (See *Goldbridge Financial Inc.*, (2011), 34 OSCB 11113 at paras. 18-23)

VI. APPLICATION OF THE LAW TO THE FACTS OF THIS CASE

The Seriousness of the Allegations

[24] We have found the Respondent's committed fraud together with other significant contraventions of the *Act*. AGF Trust put over $25 million at risk based on the

misrepresentations of the Respondents. Most of the individual investors lost their investment with calamitous results for themselves and their families.

The Respondents' Experience in the Marketplace

[25] All the Individual Respondents had experience as licensees in the financial sector. Mr. Lewis was licensed by the Financial Services Commission of Ontario as a life insurance and accident and sickness insurance agent. Mr. Scott was registered with the OSC as a scholarship plan salesperson until July 2007. Mr. Hill was registered with the OSC as a mutual funds salesperson for Keybase Financial Group Inc. He was also licensed by FSCO as a life insurance and accident and sickness insurance agent until his license expired on November 18, 2008. They knew or ought to have known their obligations to AGF Trust when they embarked on the scheme that wrought financial havoc, particularly on the individual investors.

The Level of the Respondents' Activity in the Marketplace

[26] The activity in the marketplace was substantial. Over 1,700 investors advanced money they could ill afford to lose because of the Respondents' misrepresentations. Those same misrepresentations caused AGF to put $25 million and its reputation at risk.

The Respondents' Recognition of the Seriousness of their Improprieties

[27] We decline to take this factor into consideration. The Individual Respondents had the right not to testify and to conduct a defence. While remorse may be a factor in mitigation, it cannot be converted to a factor in aggravation, merely because they chose to dispute the allegations. All the Respondents stated they were sorry for the harm done to investors, while not acknowledging they were responsible for that harm.

General and Specific Deterrence

[28] We are satisfied that the sanctions which we propose to order are proportionate to the Respondents' misconduct and will deter the Respondents and like-minded individuals to avoid similar conduct.

Disgorgement

[29] We find it more than appropriate that the Individual Respondents be ordered to disgorge those sums they appropriated to themselves.

The Effect of the Sanction

[30] We agree with Staff's submission that the conduct of the Individual Respondents has been so harmful that they should be prevented from participating in the capital markets permanently in any capacity. Public interest requires that the Individual Respondents be restrained permanently from any future participation in capital markets.

Administrative Penalty

[31] Staff seeks orders that Messrs. Lewis, Scott and Hill each pay an administrative penalty of $1 million, the maximum amount under the *Act*. If the maximum penalty is reserved for the worst offence and the worst offender, we find those two factors not present in this case. None of the Individual Respondents have been found to have contravened securities legislation until this matter. Greater sums have been put at risk and lost and respondents have been found to have re-offended. We find the sum we have chosen is appropriate to meet the public interest on the facts of this case.

Costs

[32] We have discretion to order persons or companies to pay the costs of an investigation and hearing when we find that someone has not complied with the *Act* or has not acted in the public interest. Staff has submitted a bill of costs restricted to the cost of the hearing and omitting the costs of investigation in the amount of $163,145.92. The $163,145 is supported by time sheets providing dates, numbers of hours of work and tasks performed by each of the individuals named. We agree with Staff's submission that a conservative approach has been applied to the bill of costs. Staff seeks no monetary compensation from the Corporate Respondents.

[33] We order:

(1) All Corporate Respondents are permanently prohibited from becoming registered under the *Act* pursuant to clause 1 of section 127(1) of the *Act*;

(2) All Corporate Respondents are to cease trading in securities permanently, pursuant to clause 2 of section 127(1) of the *Act*;

(3) All Corporate Respondents are prohibited permanently from acquiring any securities, pursuant to clause 2.1 of section 127(1) of the *Act*; and

(4) No exemptions contained in Ontario securities law shall apply to each of the Corporate Respondents permanently, pursuant to clause 3 of section 127(1) of the *Act*.

The Individual Respondents

[34] The following sanctions shall apply to the Individual Respondents:

(1) Messrs. Lewis, Scott and Hill are permanently prohibited from becoming registered under the *Act*, pursuant to clause 1 of section 127(1) of the *Act*;

(2) Messrs. Lewis, Scott and Hill shall cease trading in securities permanently, pursuant to clause 2 of section 127(1) of the *Act*;

(3) Messrs. Lewis, Scott and Hill are prohibited permanently from acquiring any securities, pursuant to clause 2.1 of section 127(1) of the *Act*;

(4) No exemptions contained in Ontario securities law shall apply to Messrs. Lewis, Scott and Hill permanently, pursuant to clause 3 of section 127(1) of the *Act*;

(5) Messrs. Lewis, Scott and Hill are reprimanded, pursuant to clause 6 of section 127(1) of the *Act*;

(6) Messrs. Lewis, Scott and Hill shall resign any positions they may hold as a director or officer of an issuer, a registrant or investment fund manager, pursuant to clauses 7, 8.1 and 8.3 of section 127(1) of the *Act*.

(7) Messrs. Lewis, Scott and Hill are prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, pursuant to clauses 8, 8.2 and 8.4 of section 127(1) of the *Act*;

(8) Messrs. Lewis, Scott and Hill are prohibited permanently from becoming or acting as a registrant, investment fund manager or as a promoter, pursuant to clause 8.5 of section 127(1) of the *Act*;

(9) Messrs. Lewis, Scott and Hill are each ordered to pay an administrative penalty of $750,000, pursuant to clause 9 of section 127(1) of the *Act*;

(10) Messrs. Lewis, Scott and Hill to disgorge the sums they personally appropriated as follows:

(a) Mr. Lewis, to disgorge to the Commission the amount of $0.92 million;

(b) Mr. Scott, to disgorge to the Commission the amount of $1.5 million; and

(c) Mr. Hill, to disgorge to the Commission the amount of $3.4 million.

(11) We order that all penalty and disgorged amounts are to be applied for the benefit of third parties, pursuant to section 3.4(2)(b) of the *Act*, including investors who lost money, as the Commission in its absolute discretion shall decide;

(12) Each of Messrs. Lewis, Scott and Hill are ordered to pay one third of $163,145 on account of the costs incurred in this matter, pursuant to section 127.1 of the *Act*.

Dated this 2nd day of March, 2012

"James D. Carnwath"	*"Margot C. Howard"*
James D. Carnwath, QC	Margot C. Howard, CFA