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

- AND -

IN THE MATTER OF
SEXTANT CAPITAL MANAGEMENT INC.
SEXTANT CAPITAL GP INC., OTTO SPORK, KONSTANTINOS EKONOMIDIS, ROBERT LEVACK AND NATALIE SPORK

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

Hearing:	April 18, 2012	
Decision:	June 1, 2012	
Panel:	James D. Carnwath, Q.C.	- Commissioner and Chair of the Panel
Appearances:	Jay Naster	- For Otto Spork, Konstantinos Ekonomidis and Natalie Spork
	Tamara Center Brendan van Niejenhuis	- For Staff of the Commission
	No one appeared	- For Sextant Capital Management Inc. or Sextant Capital GP Inc.

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I. HISTORY OF THE PROCEEDING

[1] This is a 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 (the "**Sanctions and Costs Hearing**") against Sextant Capital Management Inc. ("**SCMI**"), Sextant Capital GP Inc. ("**Sextant GP**") (collectively, the "**Corporate Respondents**"), Otto Spork ("**Spork**"), Konstantinos (Dino) Ekonomidis ("**Ekonomidis**") and Natalie Spork (collectively, the "**Individual Respondents**"; together with the Corporate Respondents, the "**Respondents**").

[2] The Sanctions and Costs Hearing was held following a hearing on the merits which began in June, 2010 and continued over the course of approximately 16 days until December, 2010 (the "**Merits Hearing**"). The decision on the merits was issued on May 17, 2011 (34 O.S.C.B. 5863)(the "**Merits Decision**").

[3] Upon reviewing all the evidence, the applicable law and the submissions made, the merits panel concluded in the Merits Decision, *above* at para. 285, that:

(a) Spork, SCMI and Sextant GP breached section 126.1 of the *Act*;

(b) the Respondents breached section 116 of the *Act*;

(c) SCMI, Spork, Ekonomidis, and Natalie Spork breached section 2.1 of Rule 31-505;

(d) SCMI and Sextant GP breached section 19 of the *Act*; and

(e) By engaging in conduct described above, the Respondents acted contrary to the public interest.

[4] Prior to the Merits Hearing, Robert Levack ("**Levack**"), who was also named as a respondent in this matter, settled with the Commission (*Re Sextant Capital Management Inc. et al* (2010), 33 O.S.C.B. 5045).

[5] On April 18, 2012, Staff of the Commission ("**Staff**") appeared at the Sanctions and Costs Hearing and made oral submissions. The submissions were supported by Staff's Written Submissions on sanctions and costs dated September 9, 2011, a Bill of Costs, the Affidavit of Anne Paiement, sworn September 9, 2011, with respect to costs, Briefs of Authorities, and Staff's Compendium. Counsel for Spork, Ekonomidis and Natalie Spork filed a Respondents' Compendium on April 18, 2012, appeared at the Sanctions and Costs Hearing and made oral submissions. SCMI and Sextant GP, were and continue to be in receivership, and did not appear or make submissions.

[6] The Panel notes that the Respondents received notice of the Sanctions and Costs Hearing. In accordance with subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, the Panel was entitled to proceed in the absence of the Corporate Respondents.

II. SANCTIONS AND COSTS REQUESTED

i. Staff's Position

[7] Staff has requested that the following orders be made against the Corporate Respondents:

(a) SCMI's registration under the *Act* be terminated, pursuant to clause 1 of subsection 127(1) of the *Act*;

(b) SCMI and Sextant GP be permanently prohibited from becoming registered under the *Act*, pursuant to clause 1 of subsection 127(1) of the *Act*;

(c) SCMI and Sextant GP cease trading in securities permanently, pursuant to clause 2 of subsection 127(1) of the *Act*;

(d) the acquisition of any securities by each of SCMI and Sextant GP is prohibited permanently, pursuant to clause 2.1 of subsection 127(1) of the *Act*; and

(e) any exemptions contained in Ontario securities law do not apply to each of SCMI and Sextant GP permanently, pursuant to clause 3 of subsection 127(1) of the *Act*.

[8] Staff has requested that the following orders be made against the Individual Respondents:

(a) Spork, Ekonomidis and Natalie Spork's registration under the *Act* be terminated, pursuant to clause 1 of subsection 127(1) of the *Act*;

(b) Spork be permanently prohibited, Ekonomidis be prohibited for ten (10) years, and Natalie Spork be prohibited for five (5) years from becoming registered under the *Act*, pursuant to clause 1 of subsection 127(1) of the *Act*;

(c) Spork cease trading in securities permanently, Ekonomidis cease trading in securities for ten (10) years, and Natalie Spork cease trading in securities for five (5) years, pursuant to clause 2 of subsection 127(1) of the *Act*;

(d) the acquisition of any securities by Spork is prohibited permanently, by Ekonomidis is prohibited for ten (10) years, and by Natalie Spork is prohibited for five (5) years, pursuant to clause 2.1 of subsection 127(1) of the *Act*;

(e) any exemptions contained in Ontario securities law do not apply to Spork permanently, to Ekonomidis for ten (10) years, and to Natalie Spork for five (5) years, pursuant to clause 3 of subsection 127(1) of the *Act*;

(f) Spork, Ekonomidis and Natalie Spork be reprimanded, pursuant to clause 6 of subsection 127(1) of the *Act*;

(g) Spork and Ekonomidis resign all positions as directors or officers of an issuer, registrant or investment fund manager, pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the *Act*;

(h) Natalie Spork resign all positions she may hold as a director or officer of an issuer, pursuant to clause 7 of subsection 127(1) of the *Act*;

(i) Spork be prohibited permanently and Ekonomidis be prohibited for ten (10) years from becoming or acting as officers or directors of any issuer, registrant or investment fund manager, pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the *Act*;

(j) Natalie Spork be prohibited for five (5) years from becoming or acting as an officer or director of any issuer or registrant, pursuant to clauses 8 and 8.1 of subsection 127(1) of the *Act*;

(k) Spork be prohibited permanently and Ekonomidis be prohibited for ten (10) years from becoming or acting as a registrant, investment fund manager, or as a promoter, pursuant to clause 8.5 of subsection 127(1) of the *Act*;

(l) Spork pay $1,000,000, Ekonomidis pay $250,000 and Natalie Spork pay $50,000 as an administrative penalty, pursuant to clause 9 of subsection 127(1) of the *Act*;

(m) Spork disgorge $6,750,000, Ekonomidis disgorge $325,000 and Natalie Spork disgorge $165,000 as an administrative penalty, pursuant to clause 10 of subsection 127(1) of the *Act*; and

(n) Spork pay $350,000 representing 80% of the costs, Ekonomidis pay $65,000 representing 15% of the costs, and Natalie Spork pay $20,000 representing 15% of the costs, pursuant to section 127.1 of the *Act.*

[9] In Staff's submission, the sanctions requested are appropriate in light of the conduct of the Respondents and take into account multiple breaches of the *Act*. In addition, Staff submits that their proposed sanctions will both deter the Respondents as well as like-minded individuals from involvement in similar conduct in the future.

ii. Respondents' Position

[10] Mr. Naster, counsel for Spork, Ekonomidis and Natalie Spork, submits that the Individual Respondents are entitled to the application of a principle of sentencing often expressed as "the maximum penalty is reserved for the worst offence and the worst offender". Since Spork, for example, was found to have engaged in a course of conduct which he knew or ought to have known perpetrated a fraud, it is not known whether he "knew" or "ought to have known" the consequences of his conduct.

[11] Therefore, Mr. Naster says that Spork is entitled to be sentenced as having acted in circumstances where he "ought to have known" his conduct was contrary to the *Act*. This view leads Mr. Naster to make submissions about the context of Spork's actions, which he claims attracts a lesser degree of culpability and a lesser sanction than if Spork knew his actions were fraudulent. On this analysis, Mr. Naster submits Spork cannot be the "worst offender". He is unable to provide any authority for this proposition in its application to an administrative tribunal.

iii. The Levack Settlement

[12] As mentioned above, Mr. Levack entered into a settlement agreement with the Commission. In my view, any sanctions imposed on the Respondents should be proportionate and take into consideration the sanctions imposed on the settling respondent in this matter. The following sanctions and costs were ordered against Mr. Levack:

- Levack's registration is terminated;
- Levack is to resign from one or more positions he holds as director or officer of a registrant, issuer or investment fund manager;
- Levack is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of 10 years;
- Levack is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 10 years;
- Levack is to pay an administrative penalty of $15,000, to be allocated under s. 3.4(2)(b) of the *Act* or for the benefit of third parties.

III. SANCTIONS ANALYSIS

[13] The submission of Mr. Naster which draws a distinction for sanctioning purposes between a respondent who "knew" or "ought to have known" he or she was breaching the *Act*, confuses the principles of sentencing in a criminal law context with the imposition of sanctions in a regulatory context. In *Gordon Capital Corp. v. Ontario (Securities Commission)*, 1991 CarswellOnt 947, 50 O.A.C. 258 at para. 28, the Divisional Court found as follows:

> The general legislative purpose of the Act and the OSC's role thereunder is to preserve the integrity of the capital markets of Ontario and protect the investing public. In this context, the proceedings against Gordon and Bond under subs. 26(1) of the Act are properly characterized as regulatory, protective or corrective. The primary purpose of the proceedings is to maintain standards of behaviour and regulate the conduct of those who are licensed to carry on business in the securities industry. The proceedings are not criminal or quasi-criminal in their design or punitive in their object. This distinction has been made in a number of cases involving proceedings of a regulatory or public protective nature such as that under subs. 26(1) of the Act[.]

[14] 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. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132, 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).

[15] Deterrence is an important factor that the Commission could consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672, 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). This procedure is indifferent as to the degree of culpability, but rather focuses on the harm done and the deterrence that is appropriate.

1. Specific Sanctioning Factors Applicable in this matter

[16] It is well established in the Commission's jurisprudence that, in determining the appropriate sanctions, the Commission is guided by the factors set out in *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at para. 26; and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at pp. 7746-7747). In determining the appropriate sanctions, I have taken into account those factors summarized in the following subparagraphs.

a) Seriousness of allegations: The securities law violations committed by each of the Respondents were serious and their behaviour was egregious. In the Merits Decision it was found that Spork, SCMI and Sextant GP perpetrated a fraud on investors contrary to s. 126.1 of the *Act*, all Respondents breached their duties as investment fund managers contrary to s. 116 of the *Act,* SCMI, Spork, Ekonomidis and Natalie Spork, breached their duties pursuant to s. 2.1 of Rule 31-505 to deal fairly, honestly and in good faith with clients, and the Corporate Respondents failed to maintain proper books and records contrary to s. 19 of the *Act*. Fraud, in particular, is among the most egregious securities law violations (*Re Al-Tar Energy Corp.* (2010), 33 OSCB 5535 at para 214).

b) Respondents' experience in the marketplace: All of the Respondents, except Sextant GP, were registrants with the Commission. A registrant is expected to have a higher level of awareness of duties than a non-registrant (*Re Rowan* (2009), 33 O.S.C.B. 91 ("***Re Rowan***") at para. 145; *Re Norshield* (2010), 33 O.S.C.B. 7171 at paras. 84 and 85). The Respondents failed to act in a manner expected of a registrant.

c) Level of activity in the marketplace: Since 2006, at least 246 Canadian investors invested in Sextant Canadian Fund. Third party investors invested $23 million (Merits Decision, *above* at para. 76). The amounts raised by the Respondents were substantial and caused significant financial losses that could undermine investor confidence.

d) Respondents' recognition of seriousness of improprieties: Staff submits that the Respondents provide no basis to conclude that they have recognized the seriousness of their improprieties, and that despite facing serious allegations the Respondents failed to testify. I do not consider this to be an aggravating factor. A respondent's acknowledgement of certain conduct may be a mitigating factor, but failure to do so should not be construed as an aggravating factor.

e) Specific and general deterrence: Given the seriousness of the conduct and the magnitude of the effect on the capital markets, it is important that the Respondents and like-minded individuals implicated in acts of undervaluation, misclassification of transactions and the taking of advance fees should be deterred from doing so in the future by imposing appropriate sanctions which reflect the harm done to investors in this case.

f) Size of profit gained or loss avoided from illegal conduct: The Sextant Canadian Fund paid management fees totalling $602,831 and performance fees totalling $6,331,356, which Spork benefitted from directly or indirectly (Merits Decision, *above* at para. 237). I find that as a result of his non-compliance Ekonomidis received $326,353 made up of "bonus" in the amount of $86.353 and "certified cheques" in the amount of $240,000 (Staff's Sanctions Hearing Compendium, Tab 11 at p. 260). I also find that as a result of her non-compliance Natalie Spork received $168,075 made up of "bonus" in the amount of $28,075 and "certified cheques" in the amount of $140,000 (Staff's Sanctions Hearing Compendium, Tab 11 at p. 263). The Individual Respondents should not be allowed to profit from breaches of Ontario securities law.

g) Effect of sanctions on respondent's ability to participate without check in capital markets: The gravity of the Respondents' conduct and risk to the capital markets warrants prevention from their participation, either temporarily or permanently. As confirmed by the Divisional Court, "[p]articipation in the capital markets is a privilege, not a right" (*Erikson v. Ontario (Securities Commission),* [2003] O.J. No. 593 (Sup. Ct.) at para. 56).

h) Sanctions imposed on settling respondent: As noted above at paragraph 12, Levack's registration was terminated and he was ordered to resign from positions he holds as director or officer of a registrant, issuer or investment fund manager. Levack was also prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of 10 years and prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 10 years. Levack was further ordered to pay an administrative penalty of $15,000. This amount reflects his acknowledgement of wrongdoing, his cooperation with Staff and the absence of evidence that he personally participated in non-compliance. These are mitigating factors for the settling respondent which do not apply to other Respondents.

2. Trading and Other Market Prohibitions

[17] Staff submits it would be appropriate to order that the registration of all Respondents be terminated and that the Respondents be prohibited from becoming registered for certain periods of time. Further Staff seeks orders that the Corporate Respondents and Spork cease trading in securities and be prohibited from acquiring securities and that exemptions contained in Ontario securities law not apply to them permanently. Staff seeks a cease trade order, ban on acquisition of securities and ban on the application of Ontario securities law exemptions for 10 years in the case of Ekonomidis and for 5 years in the case of Natalie Spork. Staff further requests that Spork and Ekonomidis be prohibited from becoming or acting as a registrant, investment fund manager or promoter permanently in the case of Spork and for 10 years in the case of Ekonomidis.

[18] According to Staff, the Respondents cannot be trusted to participate in Ontario's capital markets unless their participation is restricted and in a limited capacity. At the Sanctions and Costs Hearing, no submissions, oral or written, were made with respect to length or appropriateness of market prohibitions on behalf of the Respondents.

[19] I find the Respondents cannot be trusted to participate in the capital markets. The Respondents raised $23 million from investors through the sale of securities in contravention of the *Act* (Merits Decision, *above* at para. 76). This scheme was found to be fraudulent and affected at least 246 Canadian investors (Merits Decision, *above* at para. 285; Staff's Sanctions

Hearing Compendium, Tab 2: Receiver's Report at para. 6). Furthermore, the Individual Respondents were found to have breached their duties to act fairly to clients (Merits Decision, *above* at para. 285). Given this misconduct, the Respondents should not be permitted to trade in or acquire securities or rely on exemptions.

[20] To protect the public, I find that it is appropriate to impose the market prohibitions on the Respondents as requested by Staff for Spork and Ekonomidis. I find that three year bans would be more appropriate for Natalie Spork given her limited role. With respect to the Corporate Respondents, I agree that their registration should be terminated and market prohibitions should be imposed permanently.

3. Director and Officer Bans

[21] Staff requests that the Spork and Ekonomidis resign all positions that they may hold as a director or officer of an issuer, registrant or investment fund manager and that they be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager permanently in the case of Spork and for ten years in the case of Ekonomidis. Staff further requests that Natalie Spork resign all positions that she may hold as a director or officer of an issuer and be prohibited from becoming or acting as a director or officer of any issuer or registrant for five years.

[22] Staff submits that the 10 year ban for Ekonomidis is consistent with the sanction imposed in the settlement with Levack given the similarities in their experiences and roles in the company. Counsel for Ekonomidis takes issue with this characterization and submits that Ekonomidis was a salesman involved in marketing and selling the Sextant Fund. He noted that Levack, who was an integral part of the operations, did not testify that Ekonomidis was second in command. Mr. Naster also submitted that Natalie Spork's role was administrative only.

[23] In the Merits Decision, the panel found that Spork and the Corporate Respondents, of which Spork was the directing mind, conducted this fraudulent scheme resulting from: (i) wrongful inflation of the "market price" of a company in which Sextant Funds became a major investor,; (ii) advanced payments; and (iii) mischaracterization of a payment to Spork's private holding company (Merits Decision, *above*, at paras. 236, 241-242 and 243). In past cases, the Commission has issued permanent director or officer bans for a fraudulent scheme where a smaller number of investors were harmed and fewer funds were raised (*Re Al-Tar Energy Corp.* (2011), 34 O.S.C.B. 447 ("***Al-Tar Sanctions Decision***") at paras. 12 and 82; *Re Maple Leaf Investment Fund Corp.* (2012), 35 O.S.C.B. 3075 at paras. 12 and 55). In my view, the imposition of permanent director and officer bans requested by Staff will ensure that Spork will not be placed in a position of control or trust with respect to any issuer, registrant or investment fund manager in the future.

[24] I agree with Staff that the director and officer bans sought for Ekonomidis are proportionate given his involvement in the scheme and particularly having breached his duties as an investment fund manager (Merits Decision, *above* at para. 285).

[25] Despite having participated in the scheme in an administrative role, it is not disputed that Natalie Spork was in fact the registered Officer and Director (Non-Advising, Non-Trading) and Ultimate Responsible Person with SCMI and was given the title of President and Secretary of SCMI in May, 2008 (Merits Decision, *above* at para. 15). I find that a 5 year director and officer

ban would appropriately take into account her breach of the duties imposed on an investment fund manager (Merits Decision, *above* at para. 285).

4. Reprimand

[26] I find it appropriate for the Individual Respondents to be reprimanded given the multiple breaches of Ontario securities law, which for Spork included fraud and for all Respondents included failure to deal fairly, honestly and in good faith with clients and in the best interests of the investment fund (Merits Decision, *above* at para. 285). A reprimand will provide the appropriate censure of their misconduct and will impress on the public the importance of complying with the *Act*. The Individual Respondents are hereby reprimanded for the conduct set out in the Merits Decision.

5. Disgorgement

[27] 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. When determining the appropriate disgorgement orders, I am guided by a non-exhaustive list of factors set out in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight Sanctions Decision***") at para. 52, including:

> (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.

[28] In Staff's submission at the Commission should order that Spork disgorge $6.75 million, Ekonomidis disgorge $325,000 and Natalie Spork disgorge $165,000, pursuant to subsection 3.4(2)(b) of the *Act*. Staff explained that "while staff could properly request disgorgement of the whole amount obtained [from] investors, so the whole $23 million, staff has confined its request to the profits in this case" (Hearing Transcript of April 18, 2012 at pp. 41 and 53). Staff submits that Spork should disgorge the profits made from performance and management fees. In calculating profits obtained by Ekonomidis and Natalie Spork, Staff took into account figures identified as "bonus" or "certified cheque", but not salary (Hearing Transcript of April 18, 2012 at pp. 26, 28 and 53).

[29] Mr. Naster submits that monetary sanctions sought against Natalie Spork are "harsh and excessive" given her limited involvement in this matter. Mr. Naster also submits that the sanctions Staff is seeking against Ekonomidis are "very very serious" given the role he played in

sales and marketing of the fund. Counsel for the Individual Respondents questioned the inclusion of "certified cheques" and noted that bonuses were employment bonuses and that there was no evidence they were tied to performance of the Sextant Fund or due to non-compliance (Hearing Transcript of April 18, 2012 at pp. 142-143). It was shown that Levack testified to having received a bonus in the range of $80,000, yet his settlement did not require disgorgement. Mr. Naster's interpretation is that Levack was either allowed to profit, or it was determined that the bonus was not obtained as a direct result of a breach of the *Act* (Hearing Transcript of April 18, 2012 at pp. 144-146; Respondent's Compendium, Tab 32 at p. 199). Staff replied that the bonus figures were still appropriate in the circumstances, taking into account the case law and the conduct (Hearing Transcript of April 18, 2012 at p. 153).

[30] Mr. Naster also submits that the disgorgement order should be considered in context of the receivership and the settlement between the receiver and the Spork Group, which includes the Individual Respondents. Counsel submits that the receiver was to settle indebtedness owed to the related companies and that the Commission was approached with the terms of settlement. Staff's response in this respect is that the receiver ultimately only obtained $500,000 and "so there is has not been full indemnification…if you were inclined to recognize the settlement payment…reduce the disgorgement order by that amount…there is no reason why staff shouldn't be able to pursue the shortfall" (Hearing Transcript of April 18, 2012 at pp. 153 and 156).

[31] I accept Staff's suggestion that the amounts to be disgorged should be reduced by the $500,000 the receiver collected. I find that the reduction should be divided amongst the Individual Respondents in a manner that appropriately reflects their conduct in violation of Ontario securities laws. Accordingly, reductions shall be made in the following manner: (i) $400,000, representing 80 percent of the amount, shall be removed from the disgorgement amount sought for Spork; (ii) $75,000, representing 15 percent of the amount shall be removed from the disgorgement amount sought for Ekonomidis; and (iii) $25,000, representing 5 percent of the amount shall be removed from the disgorgement amount sought for Natalie Spork. Therefore, Spork shall disgorge $6.35 million, Ekonomidis shall disgorge $250,000 and Natalie Spork shall disgorge $140,000 obtained as a result of their non-compliance.

6. Administrative Penalty

[32] Staff seeks orders for an administrative penalty against Spork in the amount of $1,000,000 and against Ekonomidis in the amount of $250,000. Staff's written submissions are contradictory against Natalie Spork, at one point seeking an administrative penalty in the amount of $50,000 (Staff's Written Submissions at para. 14) and later requesting an administrative penalty in the amount of $100,000 (Staff's Written Submissions at para. 99). Oral submissions seemed to indicated Staff's pursuit of the $50,000 penalty (Hearing Transcript of April 18, 2012 at p. 12), but Mr. Naster seemed to understand that the amount sought was $100,000(Hearing Transcript of April 18, 2012 at p. 12). In light of the confusion, I proceed on the basis most favourable to the respondent and assume that Staff is seeking $50,000.

[33] Staff relies upon the *Limelight Sanctions Decision, above* at para. 67, which states:

> The purpose of an administrative penalty is to deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets.

[34] Staff also cited the *Al-Tar Sanctions Decision, above* at paras. 47-55 as an example of a Commission decision relating to fraud in which the panel ordered penalties ranging from $200,000 to $750,000 because "to be a deterrent, the amount of an administrative penalty must bear some reference to the amount raised from investors". Further, the penalty "may not act as a sufficient deterrent if its magnitude is inadequate compared with the benefit obtained by non-compliance" (*Re Rowan*, *above* at para. 74).

[35] I find that it would be appropriate for Spork to pay an administrative penalty of $1 million, Ekonomidis to pay $250,000 and Natalie Spork to pay $50,000 for their failures to comply with Ontario securities law.

IV. COSTS

[36] 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. Rule 18.2 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "***Rules of Procedure***") sets out a number of factors a Panel may consider in exercising its discretion to order costs.

[37] Staff seeks costs of $440,788.38 (Hearing Transcript of April 18, 2012 at p. 58; Staff's Bill of Costs, Tab 1). For rounding purposes, Staff requests that: (i) Spork pay $350,000, representing approximately 80 percent of costs sought; (ii) Ekonomidis pay $65,000, representing approximately 15 percent of costs sought; and (iii) Natalie Spork pay $20,000, representing approximately 5 percent of costs sought. The total costs sought includes the time of a senior litigator, one outside counsel, a forensic accountant, and an investigator. The total does not include investigation costs, litigation costs in connection with the receivership, or time spent in preparation and attendance at the Sanctions and Costs Hearing.

[38] In support of this request, Staff provided written submissions, an affidavit of Anne Paiement dated September 9, 2011 and detailed dockets (as required by Rule 18.1(2)(b) of the Commission's *Rules of Procedure*). These timesheets provided dates, numbers of hours worked and details of the tasks performed by each of the individuals listed in the bill of costs.

[39] Mr. Naster submitted that the panel should take into account additional costs borne by the Individual Respondents that were caused by allegations that Spork had forged letters of intent. Mr. Naster submits that despite knowing as early as August, 2009 that those allegations were unfounded, Staff did not disclose the information to defence counsel until the eve of the hearing in June, 2010.

[40] I agree with Staff's conservative estimate of costs and allocation amongst the Respondents. I find that it would be appropriate for Spork to pay $350,000, Ekonomidis to pay $65,000 and Natalie Spork to pay $20,000 in costs.

V. CONCLUSION

[41] I consider that it is important in this case to: (1) impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter; and (2) impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

1. Corporate Respondents

[42] I make the following orders against the Corporate Respondents:

(a) Pursuant to clause 1 of subsection 127(1) of the *Act*, SCMI's registration under the *Act* is terminated;

(b) Pursuant to clause 2 of subsection 127(1) of the *Act*, SCMI and Sextant GP shall cease trading in securities permanently;

(c) Pursuant to clause 2.1 of subsection 127(1) of the *Act,* the acquisition of any securities by each of SCMI and Sextant GP is prohibited permanently; and

(d) Pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to each of SCMI and Sextant GP permanently.

2. Otto Spork

[43] I make the following orders against Spork:

(a) pursuant to clause 1 of subsection 127(1) of the *Act*, Spork's registration under the *Act* is terminated;

(b) pursuant to clause 2 of subsection 127(1) of the *Act,* Spork shall cease trading in securities permanently;

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

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

(e) pursuant to clause 6 of subsection 127(1) of the *Act,* Spork is hereby reprimanded;

(f) pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the *Act,* Spork shall resign all positions that he may hold as director or officer of an issuer, registrant or investment fund manager;

(g) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the *Act,* Spork is prohibited permanently from becoming or acting as director or officer of any issuer, registrant or investment fund manager;

(h) pursuant to clause 8.5 of subsection 127(1) of the *Act,* Spork is prohibited permanently from becoming or acting as a registrant, as an investment fund manager, or as a promoter;

(i) pursuant to clause 9 of subsection 127(1) of the *Act,* Spork shall pay an administrative penalty in the amount of $1,000,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*;

(j) pursuant to clause 10 of subsection 127(1) of the *Act*, Spork shall disgorge $6,350,000, obtained as a result of his 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*;

(k) pursuant to section 127.1 of the *Act*, Spork shall pay $350,000 representing approximately 80% of the costs.

3. Dino Ekonomidis

[44] I make the following orders against Ekonomidis:

(a) pursuant to clause 1 of subsection 127(1) of the *Act,* Ekonomidis' registration under the *Act* is terminated;

(b) pursuant to clause 2 of subsection 127(1) of the *Act*, Ekonomidis cease trading in securities for ten (10) years;

(c) pursuant to clause 2.1 of subsection 127(1) of the *Act,* the acquisition of any securities by Ekonomidis is prohibited for ten (10) years;

(d) pursuant to clause 3 of subsection 127(1) of the *Act,* any exemptions contained in Ontario securities law do not apply to Ekonomidis for ten (10) years;

(e) pursuant to clause 6 of subsection 127(1) of the *Act,* Ekonomidis is hereby reprimanded;

(f) pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the *Act,* Ekonomidis shall resign all positions that he may hold as director or officer of an issuer, registrant or investment fund manager;

(g) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the *Act*, Ekonomidis be prohibited for ten (10) years from becoming or acting as director or officer of any issuer, registrant or investment fund manager;

(h) pursuant to clause 8.5 of subsection 127(1) of the *Act,* Ekonomidis be prohibited for ten (10) years from becoming or acting as a registrant, as an investment fund manager, or as a promoter;

(i) pursuant to clause 9 of subsection 127(1) of the *Act,* Ekonomidis shall pay an administrative penalty in the amount of $250,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*;

(j) pursuant to clause 10 of subsection 127(1) of the *Act*, Ekonomidis shall disgorge $250,000, obtained as a result of his 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*;

(k) pursuant to section 127.1 of the *Act*, Ekonomidis shall pay $65,000 representing approximately 15% of the costs.

4. Natalie Spork

[45] I make the following orders against Natalie Spork:

(a) pursuant to clause 1 of subsection 127(1) of the *Act,* Natalie Spork's registration under the *Act* is terminated;

(b) pursuant to clause 8.5 of subsection 127(1) of the *Act,* Natalie Spork is prohibited for three (3) years from becoming a registrant under the *Act*;

(c) pursuant to clause 2 of subsection 127(1) of the *Act,* Natalie Spork cease trading in securities for three (3) years;

(d) pursuant to clause 2.1 of subsection 127(1) of the *Act,* the acquisition of any securities by Natalie Spork is prohibited for three (3) years;

(e) pursuant to clause 3 of subsection 127(1) of the *Act,* any exemptions contained in Ontario securities law do not apply to Natalie Spork for three (3) years;

(f) pursuant to clause 6 of subsection 127(1) of the *Act* Natalie Spork is hereby reprimanded;

(g) pursuant to clause 7 of subsection 127(1) of the *Act,* Natalie Spork shall resign all positions a director or officer of an issuer;

(h) pursuant to clauses 8 and 8.2 of subsection 127(1) of the *Act,* Natalie Spork is prohibited for five (5) years from becoming or acting as director or officer of any issuer or registrant;

(i) pursuant to clause 9 of subsection 127(1) of the *Act,* Natalie Spork shall pay an administrative penalty in the amount of $50,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*;

(j) pursuant to clause 10 of subsection 127(1) of the *Act*, Natalie Spork shall disgorge $140,000, obtained as a result of his 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*;

(k) pursuant to section 127.1 of the *Act*, Natalie Spork shall pay $20,000 representing approximately 5% of the costs.

[46] I will issue a separate order giving effect to my decision on sanctions and costs.

Dated this 1st day of June, 2012.

"James D. Carnwath"

James D. Carnwath , Q.C.