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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 MBS GROUP (CANADA) LTD. AND BALBIR AHLUWALIA

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 37, 127 and 127.1 of the *Securities Act*)

Sanctions and Costs Hearing:	January 10, 2013	
Decision:	April 3, 2013	
Panel:	Christopher Portner	- Commissioner
Appearances:	Carlo Rossi	- For Staff of the Commission
	Balbir Ahluwalia	- For himself and for MBS Group (Canada) Ltd.

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REASONS FOR DECISION

I. INTRODUCTION

[1] This was 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 was in the public interest to make an order with respect to sanctions and costs against the respondents, MBS (Group) Canada Ltd. ("**MBS**") and Balbir Ahluwalia ("**Balbir**") (collectively, the "**Respondents**").

[2] This has been a procedurally unusual matter. The original proceeding was commenced by a Statement of Allegations and a Notice of Hearing dated June 30, 2011, which included Mohinder Ahluwalia ("**Mohinder**") as a respondent. On September 21, 2012, Staff filed an Amended Statement of Allegations relating to the Respondents and a separate Statement of Allegations relating to Mohinder. By order dated October 10, 2012, the Commission severed the proceeding against Mohinder from this proceeding and ordered that a separate hearing be held on November 29, 2012 in respect of an agreed statement of facts filed with the Commission.

[3] The hearing on the merits relating to the Respondents commenced on October 22, 2012 and continued for six days (the "**Merits Hearing**"). On the sixth day of the Merits Hearing, the parties submitted an Agreed Statement of Facts and Respondents' Admissions (the "**Agreed Facts and Admissions**"). As the Agreed Facts and Admissions included admissions to all of Staff's allegations, I issued my decision on November 5, 2012 (the "**Merits Decision**") accepting the admissions and scheduling a hearing to address sanctions and costs on a date agreed to by the parties. The Merits Decision notes that the oral evidence and exhibits entered during the first five days of the Merits Hearing were replaced in their entirety by the Agreed Facts and Admissions and that the Respondents admit that they have contravened the Act. The Merits Decision can be found at (2012), 35 O.S.C.B. 10298.

[4] After the release of the Merits Decision, a separate hearing was held on January 10, 2013 to receive submissions from Staff and Balbir regarding sanctions and costs (the "**Sanctions and Costs Hearing**"). Staff filed written submissions dated January 2, 2013 together with authorities and a Bill of Costs. Balbir made oral submissions.

[5] These are my reasons and decision as to the appropriate sanctions and costs in this matter. A copy of the sanctions order is attached as Schedule "A" to these reasons (the "**Sanctions Order**").

II. THE AGREED FACTS AND ADMISSIONS

[6] In the Agreed Facts and Admissions, Staff and Balbir agreed, and Balbir admitted, among other things, that:

(a) From June 2004 to June 2007 (the "**Material Time**"), Balbir and MBS engaged in and held themselves out as engaging in the business of trading in securities and Balbir, directly and through representatives, sold shares of Electrolinks Corporation ("**Electrolinks**") to members of the public in Ontario and other jurisdictions.

(b) During the Material Time, neither Balbir nor MBS was registered with the Commission in any capacity.

(c) During the Material Time, Electrolinks was not a reporting issuer and the Electrolinks shares were not qualified by a prospectus.

(d) Neither Balbir nor MBS were eligible for any exemptions from Ontario securities laws for the sale of Electrolinks shares.

(e) On July 9, 2004, Balbir incorporated MBS in the province of Ontario to, among other things, promote, sell and distribute Electrolinks shares.

(f) During the Material Time, Balbir had no formal training, education or experience relating to the securities industry or the capital markets.

(g) On January 26, 2005, Balbir became a director of Electrolinks, and by August 2005, Balbir became the *de facto* directing mind of Electrolinks.

(h) During the Material Time, approximately $1.5 million was transferred to accounts controlled by MBS and Balbir (the "**MBS Accounts**") by over 89 individuals or companies in exchange for shares of Electrolinks. Of these funds, approximately $164,000 was withdrawn from the MBS Accounts in cash and/or transferred to persons or companies related to Balbir.

(i) Balbir represented to the Electrolinks shareholders, directly or through his representatives, that Electrolinks would be going public and that the Electrolinks shareholders could expect to be able to sell their shares to receive a return on their investments once that had happened.

(j) During the Material Time, Electrolinks, primarily through Balbir, engaged in a number of attempts to become a public company through a reverse take-over, however, none of these attempts were successful.

(k) Balbir signed share certificates for shares that were personally owned by Mohinder and then sold by Mohinder to investors who were told that their funds were going directly to Electrolinks, however, none of Balbir, MBS or Electrolinks received the funds raised through the sale of these shares.

(l) Balbir's position is that all of the funds raised were used for the business of Electrolinks, however, Staff was unable to confirm his position.

(m) Electrolinks never became a public company nor did it make any distributions to the Electrolinks investors.

(n) Electrolinks ceased to conduct business in 2008 and was dissolved on February 10, 2010.

(o) The Electrolinks shareholders suffered a complete loss of their investments.

[7] At paragraph 34 of the Agreed Facts and Admissions, Balbir admitted that he and MBS contravened Ontario securities law during the Material Time in the following ways:

(a) The Respondents traded and engaged in, or held themselves out as engaging in, the business of trading in securities, where no exemptions were available, and without being registered to trade in securities, contrary to subsection 25(1) of the Act and contrary to the public interest;

(b) The actions of the Respondents related to the sale of securities constituted distributions of securities where no preliminary prospectus and prospectus were filed nor receipted by the Director, and where no exemptions were available, contrary to subsection 53(1) of the Act and contrary to the public interest; and

(c) As a director and officer of MBS, Balbir did authorize, permit or acquiesce in the commission of the violations of subsections 25(1) and 53(1) of the Act, as set out above, by MBS or by the salespersons, representatives or agents of MBS, contrary to section 129.2 of the Act and contrary to the public interest.

[8] Having reviewed the Agreed Facts and Admissions and concluded the Merits Hearing, I accepted the Respondents' admissions as their acknowledgement that they breached Ontario securities law in the manner referred to in paragraph [7] above.

III. THE SUBMISSIONS OF THE PARTIES

(a) Sanctions and Costs Requested by Staff

[9] Staff requests the following sanctions order against the Respondents, namely, that:

(a) Pursuant to paragraph 2 of subsection 127(1) of the Act, the Respondents cease trading in securities permanently;

(b) Pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents be prohibited permanently;

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

(d) Pursuant to paragraph 6 of subsection 127(1) of the Act, Balbir be reprimanded;

(e) Pursuant to paragraph 7 of subsection 127(1) of the Act, Balbir resign all positions that he may hold as a director or officer of an issuer;

(f) Pursuant to paragraphs 8, 8.2, and 8.4 of subsection 127(1) of the Act, Balbir be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant and investment fund manager;

(g) Pursuant to paragraph 8.5 of subsection 127(1) of the Act, Balbir be prohibited permanently from becoming or acting as a registrant, as an investment fund manager and as a promoter;

(h) Pursuant to paragraph 9 of subsection 127(1) of the Act, Balbir pay an administrative penalty of $100,000;

(i) Pursuant to paragraph 10 of subsection 127(1) of the Act, Balbir disgorge to the Commission $1,100,000 obtained as a result of his non-compliance with Ontario securities law; and

(j) Pursuant to subsection 37(1) of the Act, Balbir be prohibited permanently from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities.

[10] Staff submits that the following factors are particularly relevant to the determination of sanctions in this case:

(a) Balbir's conduct in breach of Ontario securities law spanned a period of three years;

(b) Balbir raised over $1.5 million from the sale of Electrolinks shares;

(c) Balbir entered into the agreement to distribute shares in Electrolinks despite having no formal training or education in the securities industry;

(d) Balbir was the *de facto* directing mind of Electrolinks from and after August 2005;

(e) Balbir engaged representatives to assist in distributing the Electrolinks shares;

(f) Balbir represented to investors that Electrolinks would be going public and that the investors could expect to receive a return on their investment once that had happened;

(g) Balbir signed share certificates that were provided to Mohinder's investors despite the fact that the majority of the shares being sold by Mohinder were from his personal holdings and the funds were not being provided to Electrolinks; and

(h) The Electrolinks shareholders suffered a complete loss of their investments.

Disgorgement

[11] Although not mentioned in the Agreed Facts and Admissions, and although no evidence was submitted at the Sanctions and Costs Hearing, Staff, in its written submissions, identified transfers of approximately $400,000 from the MBS bank accounts to Electrolinks in the period before Balbir became a director of Electrolinks. In oral submissions, Staff conceded that this amount should be taken into consideration in quantifying the appropriate disgorgement order.

Accordingly, Staff requests that Balbir be ordered to disgorge the full amount of the $1.5 million funds deposited to the MBS Accounts less the amount of $400,000 for a total disgorgement order of $1.1 million. Staff submits that the factors that support the disgorgement request include that (i) the amount was obtained as a result of illegal activity; (ii) the misconduct was serious and investors suffered the complete losses of their investments; and (iii) the amount obtained by Balbir is ascertainable.

Market Prohibitions

[12] Staff did not make any specific written submissions with respect to market prohibitions,. In oral submissions, Staff indicated that it did not oppose a limited carve-out with respect to a trading prohibition but asked that any carve-outs only be permitted once Balbir has paid in full any financial sanctions ordered. With respect to the remaining prohibitions, Staff submits that in order to protect the public, the permanent bans are appropriate.

Administrative Penalty

[13] Staff seeks an order that Balbir be required to pay an administrative penalty in the amount of $100,000. In written submissions, Staff outlined the principles that underlie an administrative penalty as well as the factors to be taken into consideration in determining the appropriate amount of such penalty but did not point to any specific factors in this matter. In oral submissions, Staff indicated that the amount requested sought to serve as both a general and specific deterrence. Staff noted that, although there were no allegations of misrepresentation or fraud, this case involved a significant distribution that took place over three years and that investors suffered significant losses. Notwithstanding that there were no aggravating factors in this matter, Staff nonetheless feel that a significant administrative penalty is appropriate.

Costs

[14] Staff requests an order for the payment of the Commission's investigation and hearing costs in the amount of $10,000. This amount is a fraction of Staff's actual costs of the investigation and hearing. Staff acknowledges that Balbir's conduct has been respectful throughout, that he did enter into the Agreed Facts and Admissions and that he did not add to the expense of the Merits Hearing. For this reason, Staff has limited the cost request to $10,000. Staff also noted that no costs were sought against Mohinder in his sanctions hearing and distinguished that matter which did not require a merits hearing.

(b) Balbir's Submissions

[15] Balbir accepts the administrative penalty amount requested by Staff but submits that the proposed disgorgement amount is too severe and unfair. He also submits that the market prohibitions are too restrictive.

[16] Balbir's submissions at the Sanctions and Costs Hearing were, in part, evidentiary statements that were unsupported by any actual evidence tendered. I am mindful, however, that Balbir is an unrepresented respondent, and as such, I have weighed his submissions accordingly.

[17] Balbir submits that his involvement in Electrolinks was primarily to attract investor funds so that the company could implement its business plan. He accepts responsibility for distributing securities without being properly registered. He further submits, however, that Electrolinks had an obligation to pursue proper registration prior to his involvement as a director. He pointed out that there was a board of directors, management and legal advice involved in issuing the shares of Electrolinks prior to his involvement and that at no time did Electrolinks itself effect any registrations.

[18] Balbir submits that the reason he became a director of Electrolinks was to help it during a time of financial difficulty. He acknowledges that he approached his contacts to raise funds, however, he submits that his efforts were to make Electrolinks's business plan a success, create revenue and ultimately take the company public. He submits that Electrolinks's records were audited by auditors in both the United States and Canada and says that these audits, although not in evidence, show expenses of over $5.0 million.

[19] Balbir submits that the reason he is unable to submit any evidence to the Commission in respect of these audits results from the fact that, when Electrolinks ceased to conduct business, the board of directors and management in office at the time retained the records and he was not permitted to keep copies. He believes that this places him at a disadvantage and unable to provide the Commission with any records.

[20] With respect to Staff's request for a disgorgement order in the amount of $1.1 million, Balbir submits that he was reluctant to transfer funds to Electrolinks from MBS due to Electrolinks's track record of poor fund management. He submits that Staff has copies of the cheques issued on the MBS bank accounts, showing that the $1.5 million in funds deposited to MBS was spent on Electrolinks's business, except for the $164,000 that was withdrawn in cash. Balbir submits that the cash withdrawals were used to pay third parties that requested cash in lieu of cheques because of prior cheques have been returned as the result of insufficient funds.

[21] Balbir submits that he did not personally profit from or get paid by Electrolinks. He acknowledges that he was hopeful for a big payday once the company succeeded but that this did not materialize. He submits that he personally guaranteed loans to Electrolinks in the amounts of $750,000 and $650,000, which resulted in his personal bankruptcy.

[22] Balbir concluded his submissions as follows:

> In closing, all I am saying is that I did not profit from this. I distributed. I may have raised money. I did raise money without being a registered broker. This was not done for me to profit. The money was not raised for me to profit. The money was raised to make a company a success. Every effort by myself and some of the staff, too, was to bring value to the shareholders that had put money in, a lot of it being my family and other members that I have a very difficult time with now.
>
> I would like to apologize to all the shareholders who have lost money for whatever role I played in that. I am not going to attempt to do case law. I don't know the law. I respectfully trust your judgment in this matter. I am asking that a permanent ban on my trading is a little extreme. This is my first experience in

> this. It has been a learning experience. I am willing to get educated in this business and that a ban of five years be considered, and the disgorgement amount of $1 million is unreasonable. The administration penalty, I accept that cost. (Transcript, Sanctions and Costs Hearing, pages 50-51)

[23] As noted above, I recognize that Balbir did not submit any evidence at the Sanctions and Costs Hearing. I have considered his submissions in light of the facts agreed to by Staff in the Agreed Facts and Admissions and I have weighed his submissions accordingly.

(c) Staff's Reply

[24] Staff asked that Balbir's submissions be taken only as submissions and not as evidence as Balbir chose not to give sworn evidence during the Sanctions and Costs Hearing. As noted above, I have taken this into consideration.

[25] Staff further emphasized that there is no evidence with regard to the expenses of Electrolinks. Staff was only able to trace the $400,000 that it concedes was transferred to Electrolinks. There were no audit reports or bank records submitted in evidence.

IV. SANCTIONS

(a) The Law on Sanctions

[26] Section 1.1 of the Act sets out the purpose of the Commission when determining sanctions, namely, to (a) provide protection to investors from unfair, improper or fraudulent practices; and (b) foster fair and efficient capital markets and confidence in capital markets. The Commission's objective is not to punish past conduct, but rather to restrain future conduct that may be harmful to investors or Ontario's capital markets. In determining the proper sanctions to impose in order to restrain future conduct, the Commission must look to a respondent's past conduct as a guide (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-11).

[27] In addition to looking at the specific sanctions to impose on a respondent to determine what will provide sufficient deterrence with respect to future conduct, the Commission may also consider the effect of general deterrence as an additional factor that the Commission may consider when imposing sanctions. General deterrence is a necessary consideration in making an order under section 127 that is both protective and preventative in nature (*Cartaway Resources Corp*., [2004] 1 S.C.R. 672 at para. 60).

[28] The Commission has previously identified the following factors that a panel should consider when imposing sanctions:

(a) The seriousness of the conduct and the breaches of the Act;

(b) The harm to the investors;

(c) The respondent's experience in the marketplace;

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

(e) Whether or not there has been recognition by a respondent of the seriousness of the improprieties;

(f) Whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets;

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

(h) The size of any financial sanction or voluntary payment;

(i) The effect any sanctions may have on the ability of a respondent to participate without check in the capital markets;

(j) The reputation and prestige of the respondent;

(k) The remorse of the respondent; and

(l) Any mitigating factors.

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

[29] The applicability and importance of such factors will vary according to the circumstances of each case.

(b) Specific Sanctioning Factors in this Matter

[30] In considering the various factors referred to above, I find the following factors and circumstances to be particularly relevant:

The Seriousness of the Misconduct

[31] The actions of the Respondents reflected in the Agreed Facts and Admissions involve misconduct over a period of three years that contravened significant provisions of the Act. The Respondents engaged in trading without registration and distributions of securities without complying with the prospectus requirements of the Act. The Respondents caused financial harm to investors who suffered the complete loss of their investments.

[32] The Respondents also caused harm to the integrity of Ontario's capital markets through these actions and through their representations to investors that Electrolinks was going public and that they could expect to be able to sell their shares to receive a return on their investments once that happened.

[33] Balbir has also admitted that, as a director and officer of MBS, he authorized, permitted and acquiesced in the breaches by MBS of subsections 25(1) and 53(1) of the Act, contrary to section 129.2 of the Act and the public interest.

[34] The Respondents' misconduct must be taken seriously and sanctioned appropriately in order to protect Ontario investors and prevent future harm of a similar nature.

Activity in the marketplace

[35] The Respondents were involved in raising a very significant amount. It is clear from the Agreed Facts and Admissions, however, that the bulk of these funds were not raised by Balbir himself but by representatives and that Balbir himself only raised approximately $100,000.

[36] Balbir facilitated Mohinder's sale of his personal shares of Electrolinks by signing the share certificates on behalf of Electrolinks. The funds raised through the sale of these shares were not transferred to Balbir, MBS or Electrolinks. As a signatory of the Electrolinks share certificates, Balbir had a responsibility to ascertain how the funds derived from their sale were being utilized. His carelessness in this regard warrants significant sanctions.

Specific and General Deterrence

[37] Sanctions are appropriate in this matter in order to deter the Respondents from engaging in unregistered and non-exempt activities in the future and to communicate a message to like-minded individuals that engaging in similar conduct is a breach of the Act and not tolerated by the Commission.

The Size of any Profit Made from the Illegal Conduct

[38] The Agreed Facts and Admissions states that approximately $1.5 million was transferred to the MBS Accounts in respect of the purchase of Electrolinks shares and that approximately $164,000 of the foregoing amount was withdrawn in cash and/or transferred to persons or companies related to Balbir.

[39] Staff concedes that approximately $400,000 of the funds raised by the Respondents was transferred to Electrolinks and accordingly has requested a disgorgement order for the balance of $1.1 million.

[40] The Agreed Facts and Admissions states that there is no evidence to show how the balance of the funds were allocated, other than the $164,000 referred to above, or that Balbir received any of these funds for his personal benefit.

Restraint of Ability to Participate Without Check in the Capital Markets

[41] I am satisfied that imposing restrictions on the Respondents with respect to future trading and acting as a director or officer of a reporting issuer, registrant or investment fund manager will have the effect of preventing the Respondents from participating in Ontario's capital markets without check. Sanctions of this nature are directly related to the Respondents' specific misconduct in this matter, which related directly to distributing and trading in securities in breach of the Act, and to the duties of directors and officers in the capital markets.

The Ability of the Respondent to Pay

[42] Balbir has accepted Staff's request that he pay a $100,000 administrative penalty in acknowledgment of his breaches of the Act. However, he submits that the $1.1 million that was

credited to the MBS Accounts was utilized for the business of Electrolinks. Balbir maintains that he did not profit from any of these funds personally and that even the $164,000 cash withdrawal was used to pay the expenses of Electrolinks.

[43] There was no evidence submitted with respect to the Respondents' ability to pay and, accordingly, I am unable to consider this as a factor in determining the appropriate sanctions in this matter.

Mitigating Factors

[44] Balbir has cooperated with Staff throughout this matter. Although the Merits Hearing did proceed and the Agreed Facts and Admissions were not submitted until the sixth day of the Merits Hearing, Balbir did eventually agree to the Agreed Facts and Admissions, thereby avoiding the necessity for a full hearing on the merits and reducing the costs incurred by the Commission. Staff also acknowledged that there were no aggravating circumstances in this respect.

[45] Balbir has conducted himself in a respectful and cooperative manner before the Commission. He has admitted his breaches of the Act and has taken responsibility for them. He has apologized for his actions and has shown remorse. These characteristics give the Commission comfort in determining the level of risk associated with a respondent.

[46] It was clear to me from the Agreed Facts and Admissions and Balbir's oral submissions that his activities represented an unsuccessful attempt to raise funds for a legitimate business. Staff did not allege fraud for good reason and it is clear that funds were being raised for a business purpose. It is the manner in which the funds were raised and the failure by the Respondents to comply with Ontario securities law that has led to this proceeding.

[47] Although Balbir was the directing mind of MBS and thereby responsible for its activities, there is no evidence that such activities involved fraudulent conduct.

(c) Trading and Other Bans

[48] Staff requests an order that prevents the Respondents from trading in securities permanently and that makes exemptions permanently unavailable to them under Ontario securities law. Staff is not opposed to a carve-out of this ban, subject to the full payment of any monetary orders that may be made. Balbir requests that any bans be limited to five years. He submits that this was his first experience dealing in securities, that it has been a learning experience and that he is prepared to become more educated in the industry. He did not make any submissions about a potential carve-out provision in respect of a market prohibition order.

[49] The remaining prohibitions requested by Staff relate directly to the Respondents' participation in the capital markets and Balbir's conduct in this matter. Balbir admits that he and MBS engaged in unregistered trading and in distributing Electrolinks shares over a period of three years without filing a prospectus. Balbir signed Electrolinks share certificates for the purpose of effecting Mohinder's sale of shares but did not take steps to ensure that the funds raised from the sale of those shares were used for the benefit of Electrolinks. Balbir's conduct in

this regard was serious and irresponsible and warrants a significant ban on his ability to participate in the Ontario markets for both specific and general deterrence.

[50] In my view, the circumstances of this matter do not require a permanent ban on trading and exemptions and that a ban for a period of 10 years would be more appropriate. With respect to the remaining bans requested, I agree with Staff that, in light of Balbir's conduct as director of Electrolinks and MBS, a permanent ban pursuant to paragraphs 8, 8.2, 8.4 and 8.5 of subsection 127(1) prohibiting Balbir from becoming or acting as a director or officer of any issuer, registrant and investment fund manager and from becoming or acting as a registrant, investment fund manager or promoter and a permanent ban from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities pursuant to section 37 of the Act is warranted.

(d) Disgorgement

[51] It is clear from the Agreed Facts and Admissions that a total of approximately $1.5 million of investor funds was deposited to the MBS Accounts. As a director of MBS, Balbir had some measure of control over these funds, $164,000 of which was withdrawn in cash and/or transferred to persons or companies related to Balbir. Staff concedes that $400,000 was transferred to Electrolinks leaving $936,000 for which there is no accounting.

[52] The standard of proof in Commission proceedings is the civil standard. The panel needs to scrutinize the evidence with care in determining whether, on a balance of probabilities, it is more likely than not that the alleged event occurred. The Supreme Court of Canada has held that the evidence must be sufficiently clear, convincing and cogent to satisfy this standard (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 at paras. 40 and 46).

[53] In determining whether to issue a disgorgement order, I have considered the following factors as set out in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 at paragraph 52:

(a) The amount obtained by the Respondents as a result of their non-compliance with the Act;

(b) The seriousness of the Respondents' misconduct;

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

(d) The likelihood that the persons who suffered losses are likely to obtain redress by other means; and

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

[54] As noted above, I have taken Balbir's submissions as just that, submissions, and have recognized that he did not submit any evidence at the Sanctions and Costs Hearing. In determining what weight, if any, to assign to Balbir's submissions, I have considered the source,

the fact that Staff did not have an opportunity to engage in cross-examination and the information set out in the Agreed Facts and Admissions.

[55] Staff has the onus of proving on a balance of probabilities the amount obtained by a respondent as a result of non-compliance with Ontario securities law (*Re Gold-Quest International* (2010), 33 O.S.C.B. 11179 at para. 90). Staff has satisfied this burden in the Agreed Facts and Admissions in which the Respondents admit that approximately $1.5 million was received from Electrolinks investors and deposited to the MBS Accounts.

[56] In *Re Limelight, supra* at paragraph 49, the Commission commented on how amounts obtained are to be determined for purposes of a disgorgement order as follows:

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

[57] The Agreed Facts and Admissions assists Staff in satisfying its burden of showing that MBS was in receipt of the $1.5 million, less the $400,000 conceded by Staff, and that, of those funds, $164,000 was withdrawn in cash and/or transferred to persons or companies related to Balbir. However, the onus also lies with Staff to demonstrate that, on a balance of probabilities, Balbir was personally in receipt of those funds. Although Balbir has admitted that MBS received the investor funds, he submits that he did not personally receive those funds. This is supported by the Agreed Facts and Admissions, which states that it is Balbir's position that all funds raised were used for the business of Electrolinks. This statement, as part of the Agreed Facts and Admissions, is in evidence and was accepted by me. Balbir restated this position in his closing submissions. In reply, Staff indicated that there is no evidence of any such expenses, however, as noted above, the burden lies with Staff to demonstrate that the funds went to Balbir personally. Staff did not meet this burden. It is not enough for Staff to say there is no evidence one way or the other. Accordingly, I am not satisfied that Balbir be solely liable to disgorge the full amount of the funds received by MBS. A sanctions order will be issued requiring Balbir to disgorge the $164,000 in cash that he withdrew and/or transferred and for MBS and Balbir to disgorge, on a joint and several basis, the remaining $936,000.

(e) Administrative Penalty

[58] In his closing submissions, Balbir agreed to pay the $100,000 administrative penalty amount requested by Staff. In my view, it is appropriate to impose this penalty on Balbir. Balbir's behavior was irresponsible. He not only participated in raising funds for Electrolinks in a manner that was in breach of key provisions of the Act, but he also assisted Mohinder in raising funds without keeping a proper record of those funds. Although Balbir did not personally profit from the funds raised, his conduct is unacceptable. Balbir committed multiple breaches of the Act over a three year period causing serious harm to investors. Accordingly, a $100,000 administrative penalty is appropriate, which amount shall be designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act.

(f) Costs

[59] Staff has requested that Balbir be ordered to pay $10,000 in costs pursuant to section 127.1 of the Act. In light of Balbir's cooperation and his agreement and admissions in the Agreed Facts and Admissions, I believe that the costs order proposed by Staff is appropriate.

V. CONCLUSION

[60] In all of the circumstances, I have concluded that my decision on sanctions and costs is proportionate to the activities of the Respondents and will assist in deterring both the Respondents and like-minded people from engaging in future conduct that violates securities laws. Accordingly, the Sanctions and Costs Order (the "**Order**") will provide as follows:

(a) Pursuant to paragraph 2 of subsection 127(1) of the Act, the Respondents shall cease trading in securities for a period 10 years from the date of the Order provided that the entire amount of the payments set out in paragraphs (i), (j), (k), and (l) below has been paid in full. If such amounts remain unpaid, the Respondents shall cease trading in securities without limitation as to time.

(b) Pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents is prohibited for a period of 10 years from the date of the Order provided that the entire amount of the payments set out in paragraphs (i), (j), (k), and (l) below has been paid in full. If such amounts remain unpaid, the Respondents shall be prohibited from acquiring securities without limitation as to time.

(c) Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Respondents for a period of 10 years from the date of the Order provided that the payments set out in paragraphs (i), (j), (k), and (l) below has been paid in full. If such amounts remain unpaid, any exemptions contained in Ontario securities law shall not apply to the Respondents without limitation as to time.

(d) Pursuant to paragraph 6 of subsection 127(1) of the Act, Balbir is reprimanded.

(e) Pursuant to paragraph 7 of subsection 127(1) of the Act, Balbir shall resign all positions that he may hold as a director or officer of an issuer.

(f) Pursuant to paragraphs 8, 8.2, and 8.4 of subsection 127(1) of the Act, Balbir is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant, and investment fund manager.

(g) Pursuant to paragraph 8.5 of subsection 127(1) of the Act, Balbir is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

(h) Pursuant to section 37 of the Act, Balbir shall be prohibited permanently from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities.

(i) Pursuant to paragraph 9 of subsection 127(1) of the Act, Balbir shall pay an administrative penalty of $100,000.

(j) Pursuant to paragraph 10 of subsection 127(1) of the Act, Balbir shall disgorge to the Commission $164,000 obtained as a result of his non-compliance with Ontario securities law.

(k) Pursuant to paragraph 10 of subsection 127(1) of the Act, Balbir and MBS shall disgorge to the Commission, on a joint and several basis, $936,000 obtained as a result of the non-compliance by MBS and Balbir with Ontario securities law.

(l) Pursuant to section 127.1 of the Act, Balbir shall pay costs incurred by the Commission in the amount of $10,000.

(m) All amounts received by the Commission in respect of the administrative penalty ordered in paragraph (i) above and the disgorgement amounts ordered in paragraphs (j) and (k) above are to be designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act.

Dated at Toronto this 3rd day of April, 2013.

"Christopher Portner"

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Christopher Portner