



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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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 NEW FOUND FREEDOM FINANCIAL,  
RON DEONARINE SINGH, WAYNE GERARD MARTINEZ, PAULINE LEVY,  
DAVID WHIDDEN, PAUL SWABY AND ZOMPAS CONSULTING**

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

**Hearing:** March 13, 2013

**Decision:** June 26, 2013

**Panel:** James D. Carnwath, Q.C. - Commissioner and Chair of the Panel

**Appearances:** Amanda Heydon - For Staff of the Commission  
Sean Horgan

Ron D. Singh - Did not appear  
Wayne G. Martinez - Did not appear  
Pauline Levy - Did not appear  
New Found Freedom  
Financial - Did not appear

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## PART I - OVERVIEW

[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 determine whether it is in the public interest to order sanctions against New Found Freedom Financial (“**NFF**”), Ron Deonarine Singh (“**Singh**”), Wayne Gerard Martinez (“**Martinez**”) and Pauline Levy (“**Levy**”) (collectively, the “**Respondents**”).

[2] Prior to the merits hearing, Paul Swaby (“**Swaby**”), Zompas Consulting (“**Zompas**”) and David Whidden (“**Whidden**”), who were also named as respondents in the matter, settled with Enforcement Staff of the Commission (“**Staff**”). On July 26, 2012, the Commission approved a settlement agreement between Staff and Swaby and Zompas (*Re New Found Freedom Financial* (2012), 35 O.S.C.B. 7085). On September 7, 2012, the Commission approved a settlement agreement between Staff and Whidden (*Re New Found Freedom Financial* (2012), 35 O.S.C.B. 8414 (the “**Whidden Order**”).

[3] The Commission’s Reasons and Decision on the merits dated December 17, 2012 (*Re New Found Freedom Financial et al.* (2012), 35 O.S.C.B. 11522 (the “**Merits Decision**”)) concluded that the Respondents engaged in conduct including unregistered trading and an illegal distribution of securities which resulted in losses of at least \$1.1 million to investors. In addition, certain of the Respondents were found to have perpetrated a fraud.

[4] A separate hearing was held on March 13, 2013 to consider submissions regarding the sanctions and costs (the “**Hearing**”). Staff appeared at the Hearing and made submissions. The Respondents did not appear or make submissions on sanctions and costs, despite being served with the Merits Decision.

[5] I am satisfied that the Respondents have received notice of this proceeding and that I may proceed in the absence of the Respondents, in accordance with subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, and Rule 7.1 of the Commission’s *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (“**Rules of Procedure**”).

### The Merits Decision

[6] In the Merits Decision, I found that:

- (a) the Respondents traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so and without an exemption from the dealer registration requirement, contrary to subsection 25(1)(a) of the *Act* as that section existed at the time of the conduct at issue, and contrary to subsection 25(1) of the *Act* as subsequently amended on September 28, 2009;
- (b) the activities of the Respondents constituted a distribution of securities for which no preliminary prospectus or prospectus has been filed and for

which no receipt has been issued by the Director, contrary to subsection 53(1) of the *Act*;

- (c) NFF, Singh and Martinez directly or indirectly engaged or participated in acts, practices or a course of conduct relating to securities that they knew or reasonably ought to have known perpetrate a fraud on persons contrary to subsection 126.1(b) of the *Act*;
- (d) as *de facto* directors of NFF, Singh and Martinez authorized, permitted or acquiesced in NFF's non-compliance with Ontario securities law and accordingly are deemed to have not complied with Ontario securities law, pursuant to section 129.2 of the *Act*; and
- (e) the Respondents' conduct outlined above was contrary to the public interest and harmful to the integrity of the capital markets in Ontario.

(Merits Decision, above at para. 210)

[7] I found that NFF was a foreign exchange trading (“**Forex**”) scheme, in which investors were persuaded to advance money for investment in Forex on the promise of unrealistic returns. Funds from investors late to the program were used to pay earlier investors and the proponents of the scheme, to their detriment (Merits Decision, above at para. 1).

[8] Singh, Martinez and Levy provided investment agreements (the “**NFF Investment Contracts**”) to potential investors (Merits Decision, above at para. 176). I found that the NFF Investment Contracts were securities within the meaning of the *Act* (Merits Decision, above at para. 178). Singh, Martinez and Levy met with investors to discuss NFF Investment Contracts, and they each prepared and/or distributed promotional materials describing the NFF Investment Contracts (Merits Decision, above at para. 176).

[9] Singh and Martinez were the directing minds of NFF (Merits Decision, above at para. 208). They made all significant business decisions and had control over NFF's bank accounts, into which investor funds were deposited. They paid referral fees to Levy and others who brought investors into the NFF program (Merits Decision, above at para. 177).

[10] Singh and Martinez knowingly committed fraud. I found that their conduct was “nothing less than a litany of deceit, falsehoods and other fraudulent means”, of which they each had subjective knowledge, including:

- Singh and Martinez represented to investors that their funds would be used for Forex or kept on deposit, but some investor funds were loaned to a property development company. Singh and Martinez admitted that they knew those funds were not being used for Forex;

- investor accounts were not segregated despite representations to the contrary in one of the NFF Investment Contracts;
- they admitted that NFF used investor funds to make monthly payments to other investors;
- despite knowing that NFF had not transferred any funds to Forex traders since January 23, 2009, they continued to solicit new investments without informing investors of this fact;
- after January 23, 2009, investors were provided with “Confirmation” letters which stated their funds would be deposited with a trader on a particular date when, in fact, no deposits were being made to any of the traders;
- they continued to seek new investments after July 3, 2009, without informing investors that NFF had stopped receiving payments from any of the Forex traders;
- despite knowing that NFF had not received any payments from any of the Forex traders since July 3, 2009, they represented to investors that NFF was having difficulty making monthly payments in July, August and September 2009 due solely to “banking problems”;
- they used \$173,890 of the funds in NFF’s accounts for personal purposes including direct transfers to their individual accounts, cash withdrawals and VISA payments; and
- contrary to the representations made to investors by Singh and Martinez, investors’ principal was not guaranteed – a total of over \$1.1 million has never been returned to investors.

(Merits Decision, above at paras. 193 and 201)

[11] As *de facto* directors of NFF, I found that Singh and Martinez authorized, permitted or acquiesced in NFF’s contraventions of sections 25, 53(1) and 126.1(b) of the *Act* (Merits Decision, above at para. 209).

## **PART II - SANCTIONS REQUESTED**

[12] Staff submits that the following sanctions are appropriate:

- (i) With respect to NFF, Singh and Martinez:
  - an order that NFF, Singh and Martinez cease trading in and acquiring securities permanently;

- an order that any exemptions contained in Ontario securities law do not apply to NFF, Singh and Martinez permanently;
- an order that Singh and Martinez be reprimanded;
- an order that Singh and Martinez resign all positions they hold as a director or officer of any issuer, registrant or investment fund manager;
- an order that Singh and Martinez are permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
- an order that NFF, Singh and Martinez are permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;
- an order requiring Singh and Martinez to each pay an administrative penalty of \$250,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*;
- an order making NFF, Singh and Martinez jointly and severally liable to disgorge to the Commission \$1,142,618 obtained as a result of their non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*; and
- an order requiring payment by NFF, Singh and Martinez on a joint and several basis of \$85,856 representing part of the costs incurred in the hearing of this matter.

(ii) With respect to Levy:

- an order that Levy cease trading in and acquiring securities for a period of 5 years, with the exception that, once she has satisfied all monetary orders, she be permitted to trade and acquire securities for the account of her registered retirement savings plan as defined in the *Income Tax Act*, R.S.C. 1985, c. 1, as amended;
- an order that any exemptions contained in Ontario securities law do not apply to Levy for a period of 5 years, except as required to trade in or acquire securities in accordance with the exception provided above;
- an order that Levy be reprimanded;
- an order that Levy resign all positions she holds as a director or officer of any issuer, registrant or investment fund manager;

- an order that Levy is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of 5 years;
- an order that Levy is prohibited from becoming or acting as a registrant, investment fund manager or promoter for a period of 5 years;
- an order requiring Levy to pay an administrative penalty of \$15,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*;
- an order that Levy disgorge to the Commission \$63,849 obtained as a result of her non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the *Act*; and
- an order requiring payment by Levy, jointly and severally with NFF, Singh and Martinez, of \$10,000 representing part of the costs incurred in the hearing of this matter.

### **PART III - THE LAW**

[13] Staff made extensive submissions with respect to the applicable law in this matter which are reproduced in this Part III.

#### **A. The Imposition of Sanctions**

[14] The Commission must ensure that the sanctions imposed in each case are proportionate to the circumstances and conduct of the particular respondent. Some of the factors the Commission has considered in determining appropriate sanctions include:

- (a) the seriousness of the allegations;
- (b) the respondent's experience in the marketplace;
- (c) the level of a respondent's activity in the marketplace;
- (d) whether or not there has been a recognition of the seriousness of the improprieties;
- (e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;
- (f) any mitigating factors;

- (g) the size of any profit made or loss avoided from the illegal conduct;
- (h) the size of any financial sanction or voluntary payment considered with other factors;
- (i) the effect any sanction might have on the livelihood of a respondent;
- (j) the restraint any sanctions may have on the ability of a respondent to participate without check in the capital markets;
- (k) the reputation and prestige of the respondent;
- (l) the shame or financial pain that any sanction would reasonably cause to the respondent; and
- (m) the remorse of the respondent.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746); *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at 1134-1136)

[15] The Commission may also consider general and specific deterrence in crafting appropriate sanctions. The weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 (“*Cartaway*”) at paras. 60 and 64; *Re Momentas Corp.* (2007), 30 O.S.C.B. 6475 at paras. 51-52).

## **B. Application of Factors**

[16] I accept Staff’s submissions and agree that the factors below are particularly relevant to the drafting of sanctions in this case.

### **(i) Seriousness of the Allegations**

[17] Where a respondent has breached securities law in a number of respects, the Commission may consider the seriousness of the breaches both individually and collectively (*Re Rowan* (2010), 33 O.S.C.B. 91 (“*Rowan*”) at paras. 161 and 165).

[18] The evidence established that NFF, Singh and Martinez committed a series of breaches of the *Act* that included unregistered trading and distribution of securities without a prospectus. The Commission has previously held that the registration and prospectus requirements are essential to the regulatory framework of the *Act* and play an essential role in the protection of investors (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 at para. 135; *Re MP Global Financial Ltd.* (2011), 34 O.S.C.B. 8897 at para. 117).

[19] I found that NFF, Singh and Martinez committed dishonest acts and engaged in an ongoing course of deceitful and fraudulent conduct, including:



- (a) misrepresentations to investors in the NFF Investment Contracts and promotional materials;
- (b) making misleading statements or omissions in the course of soliciting investors after January 23, 2009 and July 3, 2009;
- (c) unauthorized use of investor funds to make payments to other investors; and
- (d) use of investor funds for personal purposes.

(Merits Decision, above at paras. 193 and 201)

[20] The Commission has previously held that:

Fraud is “one of the most egregious securities regulatory violations” and is both “an affront to the individual investors directly targeted” and something that “decreases confidence in the fairness and efficacy of the entire capital market system”.

(*Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 at para. 214 citing *Re Capital Alternatives Inc.* (2007), A.B.A.S.C. 79 at para. 308 citing D. Johnston and K.D. Rockwell, *Canadian Securities Regulation*, 4<sup>th</sup> ed., Markham: Lexis Nexis, 2007 at 420).

[21] I agree with Staff’s submissions that conduct of NFF, Singh and Martinez, including persistent deception of investors, is cause for genuine concern. As a result of this conduct, investors sustained losses of at least \$1.1 million.

[22] I found that Levy engaged in unregistered trading and distribution of securities without a prospectus. I agree with Staff’s submissions that the seriousness of Levy’s conduct is compounded by the fact that she used her position of trust as a mortgage broker agent to solicit investors for NFF. Levy suggested to her mortgage clients that they could use an investment in NFF to help pay their mortgages, and some of them ultimately decided to take some equity out of their homes to invest with NFF (Merits Decision, above at paras. 127, 180 and 186).

**(ii) Respondents’ Experience in the Marketplace**

[23] There is no evidence that any of the Respondents have any experience in the capital markets other than with respect to this scheme. None of the Respondents have ever been registered with the Commission in any capacity.

**(iii) Respondents’ Recognition of the Seriousness of the Improprieties**

[24] The Respondents appeared personally at the merits hearing. Martinez and Levy testified on their own behalf, while Singh did not testify and did not call any witnesses. The Respondents

took no responsibility for their actions nor did they express remorse. Martinez blamed others, including the Commission.

[25] Staff submits that the actions of the Respondents demonstrate they have not recognized the seriousness of their conduct. I do not find this to be an aggravating factor.

***(iv) Profit Made or Loss Avoided from Illegal Conduct***

[26] The Respondents raised a total of \$1,844,725 from 57 investors. Singh and Martinez used investor funds to make payments to themselves, cash withdrawals, and payments to VISA accounts in their names totalling \$173,890 (Merits Decision, above at paras. 10, 31, 38 and 193).

[27] Levy received referral fees from NFF for referring investors into the program. She received payments from NFF through the accounts of her business partner totalling \$63,849 (Merits Decision, above at paras. 31, 42 and 123-124). Although Levy used some of these funds to make payments to her clients, she did not provide sufficient evidence to establish the exact amount used for this purpose (Merits Decision, above at para. 124). The balance of these payments were retained by Levy for her referral fees (Merits Decision, above at para. 42).

***(v) Any Mitigating Factors***

[28] I find there are no mitigating factors in respect of NFF, Singh or Martinez. On the contrary, they persisted in their unlawful course of conduct knowing that they were dishonestly depriving investors of their funds.

[29] There is no evidence that Levy was aware the NFF investment was fraudulent at the time she referred clients to the program. Rather, she believed what Martinez told her about the program. After investors stopped receiving payments from NFF, Levy made some efforts to assist them in recovering their funds. This is a mitigating factor that may be considered by the Panel in determining the appropriate sanctions.

***(vi) General and Specific Deterrence***

[30] There is a need to send a strong message to the Respondents and the public at large in this case. Orders removing NFF, Singh and Martinez permanently from the capital markets, imposing significant administrative penalties and requiring disgorgement of funds not returned to investors are proportionate to their misconduct, and will send a message to NFF, Singh and Martinez and to like-minded individuals that involvement in these types of fraudulent schemes will result in severe sanctions.

[31] In addition, orders removing Levy from the capital markets for a period of 5 years, requiring disgorgement of all funds received from NFF and imposing an administrative penalty will send a message to Levy and to like-minded individuals that breaches of the registration and prospectus requirements will be viewed seriously by the Commission.

## C. Market Bans

### (i) *NFF, Singh and Martinez*

[32] Staff submits that given their conduct, NFF, Singh and Martinez should be subject to permanent trading, acquisition and exemption bans, and Singh and Martinez should also be subject to permanent director and officer bans. Even in the absence of a fraud finding, the Commission has held that permanent trading, exemption and director and officer bans were necessary where a respondent had violated sections 25 and 53 of the *Act* and had engaged in misleading and deceptive behaviour. Staff submits that a permanent ban is all the more appropriate where fraud has been found (*Re Ochnik* (2006), 29 O.S.C.B. 3929 at paras. 108-113).

[33] Staff further submits that the trading and acquisition bans applicable to Singh and Martinez should not be subject to a “carve out” for personal trading in an RRSP account. The Commission has declined to grant a carve-out for personal trading where it had “no confidence whatsoever” that the respondent would not “once again push the envelope by engaging in conduct which is detrimental to others and abusive of our capital markets”. Singh and Martinez’s fraudulent conduct demonstrates that they cannot be trusted to participate in the capital markets in even a limited capacity (*Re Fortuna-St. John* (1998), 21 O.S.C.B. 3851 at paras. 130-133).

[34] I agree with Staff’s submissions and find that it is appropriate that NFF, Singh and Martinez be subject to permanent trading, acquisition and exemption application bans with no carve-out for personal trading. I further find that Singh and Martinez should be subject to permanent director and officer bans.

### (ii) *Levy*

[35] With respect to Levy’s conduct, Staff submits that a five year trading, acquisition, exemption and director and officer bans are appropriate in the circumstances. The Commission has previously held that five year market bans are appropriate where the respondents engaged in unregistered trading and illegal distribution of securities but were not involved in fraud (*Re Simply Wealth* (2013), 36 O.S.C.B. 811).

[36] Staff submits that five year bans are also consistent with the sanctions imposed by the Commission in a settlement agreement with Whidden. Whidden and Levy played similar roles as referrers for the NFF investment. They each engaged in unregistered trading and illegal distribution of securities by soliciting investors for NFF and receiving referral fees in return. Whidden received four year trading, acquisition, exemption and director and officer bans (Whidden Order, above). These sanctions took into account a number of mitigating factors, including cooperation in reaching a settlement and demonstrated remorse in repaying all of the referral fees he received to investors.

[37] The Supreme Court of Canada has held that while settlement agreements arrived at with co-respondents are not binding on the Commission in determining sanctions for other co-

respondents, “such settlements are among the relevant factors in assessing the appropriate penalty” (*Cartaway*, above at para. 68).

[38] Staff further submits that the trading, acquisition and exemption bans applied to Levy should be subject to a “carve out” for personal trading in an RRSP account, to become active after payment of any order for disgorgement, administrative penalties and costs. This is also consistent with the Commission’s approach in *Simply Wealth* and with the Whidden settlement agreement (*Simply Wealth*, above; Whidden Order, above).

[39] I agree with Staff’s submissions and find that a five year trading, acquisition and exemption application ban with a carve-out for personal trading in an RRSP account after payment of monetary penalties and orders are appropriate sanctions for Levy. I also find that Levy should be subject to five year market prohibitions.

#### **D. Disgorgement**

[40] Pursuant to clause 10 of subsection 127(1) of the *Act*, the Commission has the power to order disgorgement of “any amounts obtained as a result of the non-compliance” with Ontario securities law. The Commission has previously held that “all money illegally obtained from investors can be ordered to be disgorged, not just the ‘profit’ made as a result of the activity” (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 (“*Limelight*”) at para. 49).

[41] In *Limelight*, the Commission held that it should consider the following non-exhaustive list of factors when contemplating a disgorgement order, in addition to the general factors for sanctioning:

- (a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;
- (b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;
- (c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;
- (d) whether the individuals who suffered losses are likely to be able to obtain redress; and
- (e) the deterrent effect of a disgorgement order on the respondents and other market participants.

(*Limelight*, above at para. 52)

[42] Staff has the onus of proving, on a balance of probabilities, the amounts obtained by a respondent as a result of his or her non-compliance with the *Act*. Subject to that onus, any risk of

uncertainty in calculating disgorgement falls on the wrongdoer whose non-compliance with the *Act* gave rise to the uncertainty (*Limelight*, above at para. 53).

[43] Staff submits that the total amount obtained by NFF, Singh and Martinez from investors, less amounts repaid to investors, should be disgorged based on consideration of the following factors:

- (a) this amount was obtained as a result of NFF, Singh and Martinez's unregistered trading and facilitated by their fraudulent conduct;
- (b) their misconduct was extremely serious and investors were seriously harmed by the fraud perpetrated by NFF, Singh and Martinez;
- (c) the amount obtained by NFF, Singh and Martinez has been ascertained;
- (d) it does not appear likely that investors will be able to recoup much, if any, of their losses given that virtually all of the investor funds have been disposed of by Singh and Martinez; and
- (e) a disgorgement order for the amount lost by investors as a result of the conduct of NFF, Singh and Martinez would have a significant specific and general deterrent effect.

[44] Levy must be credited for \$4,000 returned to four investors as shown in Ex. 115, Tab 1, pp. 10 and 14. The sum to be disgorged and sought by Staff of \$63,849 should be reduced to \$59,849.

[45] As a result of their non-compliance NFF, Singh and Martinez raised \$1,844,725 from investors and returned \$702,107 during the same period (Merits Decision, above at paras. 31 and 33). As *de facto* directors and officers of NFF, Singh and Martinez should be jointly liable with NFF for \$1,071,269. The amount of \$1,071,269 reflects the amount raised less: (i) the amounts repaid to investors by NFF, Singh, Martinez and Levy; (ii) the amount to be disgorged by Levy; and (iii) \$7,500 ordered to be disgorged by Swaby and Zompas.

#### **E. Administrative Penalty**

[46] The Commission has held that an administrative penalty should be of a magnitude sufficient to ensure effective specific and general deterrence. Factors to be considered in determining an appropriate administrative penalty include: the scope and seriousness of a respondent's misconduct; whether there were multiple and/or repeated breaches of the *Act*; whether the respondent realized any profit as a result of his or her misconduct; the amount of money raised from investors; the harm caused to investors; and the level of administrative penalties imposed in other cases (*Rowan*, above at paras. 67, 70 and 73; *Limelight*, above at paras. 67, 71 and 78).

[47] Levy was deceived by Singh and Martinez. She took active steps to try and recover the money her clients invested. A more appropriate administrative penalty for her is \$5,000. In all other respects I find Staff's submissions to be appropriate.

[48] I find the administrative penalties of \$250,000 each sought against Singh and Martinez to be appropriate.

## **F. COSTS**

[49] Section 127.1 of the *Act* enables the Commission to order a person or company to pay the costs of an investigation and a hearing if the Commission is satisfied that that person or company has not complied with the *Act* or has not acted in the public interest. A costs order pursuant to section 127.1 of the *Act* is not a sanction. Rather, it is a means of recovering the costs of a hearing or investigation from persons or companies who have breached Ontario securities law or acted contrary to the public interest. As the Commission is a self-funded body, it is appropriate that its costs should be borne by those who have caused them to be incurred rather than by capital markets participants who comply with securities law.

[50] The Commission's *Rules of Procedure* set out a number of factors a panel may consider in exercising its discretion to order costs pursuant to section 127.1 of the *Act*. The relevant factors in this case include:

- the conduct of Staff during the investigation and during the proceeding, and how Staff's conduct contributed to the costs of the investigation and the proceeding;
- whether the respondent contributed to a shorter, more efficient, and more effective hearing, or whether the conduct of the respondent unnecessarily lengthened the duration of the proceeding;
- whether the respondent participated in the proceeding in a way that helped the Commission understand the issues before it;
- whether the respondent participated in a responsible, informed and well-prepared manner;
- whether the respondent co-operated with Staff and disclosed all relevant information; and
- whether the respondent denied or refused to admit anything that should have been admitted.

(*Rules of Procedure*, above, Rule 18.2)

[51] I agree with Staff's calculation of costs. NFF, Singh and Martinez shall be jointly and severally liable for costs of \$85,856 and Levy shall pay to the Commission costs of \$5,000, jointly and severally with NFF, Singh and Martinez.

#### **PART IV - CONCLUSION**

[52] I have reviewed Staff's submissions with respect to the Merits Decision and find them to be accurate. I have reviewed Staff's submissions on the appropriate sanctions and found them, for the most part, to be appropriate.

[53] I have reviewed Staff's submissions on the applicable law and find the statement of the law to be consistent with established jurisprudence in Commission matters.

##### **A. NFF, Singh and Martinez**

[54] NFF, Singh and Martinez defrauded investors of over \$1.1 million and took \$173,890 for their personal use. They continued to solicit investments after NFF had stopped receiving payments from Forex traders. They contravened subsection 25(1)(a) of the *Act*, and 25(1) of the *Act* as amended on September 28, 2009, subsection 53(1) of the *Act*, subsection 126.1(b) of the *Act* and acted contrary to the public interest. Singh and Martinez are also deemed to have not complied with Ontario securities law, pursuant to section 129.2 of the *Act*. I find the following sanctions and costs to be appropriate and in the public interest:

- (a) pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the *Act*, that NFF, Singh and Martinez cease trading in and acquiring securities permanently;
- (b) pursuant to paragraph 3 of subsection 127(1) of the *Act*, that any exemptions contained in Ontario securities law do not apply to NFF, Singh and Martinez permanently;
- (c) pursuant to paragraph 6 of subsection 127(1) of the *Act*, that Singh and Martinez be reprimanded;
- (d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the *Act*, that Singh and Martinez shall resign all positions they hold as a director or officer of any issuer, registrant or investment fund manager;
- (e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the *Act*, that Singh and Martinez are permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
- (f) pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, that NFF, Singh and Martinez are permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;

- (g) pursuant to paragraph 9 of subsection 127(1) of the *Act*, that Singh and Martinez shall each pay an administrative penalty of \$250,000, to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the *Act*;
- (h) pursuant to paragraph 10 of subsection 127(1) of the *Act*, that NFF, Singh and Martinez are jointly and severally liable to disgorge to the Commission \$1,071,269 obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the *Act*; and
- (i) pursuant to section 127.1 of the *Act*, that NFF, Singh and Martinez shall pay on a joint and several basis \$85,856 for costs incurred in the hearing of this matter.

**B. Pauline Levy**

[55] Levy engaged in the business of trading securities without being registered to do so and her activity constituted a distribution of securities. Levy's conduct resulted in breaches of subsection 25(1)(a) of the *Act*, subsection 25(1) of the *Act*, as amended on September 28, 2009 and subsection 53(1) of the *Act*. Her conduct was contrary to the public interest. I find the following sanctions and costs for Levy to be appropriate and in the public interest:

- (a) pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the *Act*, that Levy cease trading in and acquiring securities for a period of 5 years, with the exception that she be permitted to trade and acquire securities for the account of her registered retirement savings plan, as defined in the *Income Tax Act*, R.S.C. 1985, c. 1, as amended, after the administrative penalty at subparagraph (g) and disgorgement at subparagraph (h) ordered against her below are paid in full;
- (b) pursuant to paragraph 3 of subsection 127(1) of the *Act*, that any exemptions contained in Ontario securities law do not apply to Levy for a period of 5 years, except as required to trade in or acquire securities in accordance with the exception provided above;
- (c) pursuant to paragraph 6 of subsection 127(1) of the *Act*, that Levy be reprimanded;
- (d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the *Act*, that Levy shall resign all positions she holds as a director or officer of any issuer, registrant or investment fund manager;



- (e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the *Act*, that Levy is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of 5 years;
- (f) pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, that Levy is prohibited from becoming or acting as a registrant, investment fund manager or promoter for a period of 5 years;
- (g) pursuant to paragraph 9 of subsection 127(1) of the *Act*, that Levy shall pay an administrative penalty of \$5,000, to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the *Act*;
- (h) pursuant to paragraph 10 of subsection 127(1) of the *Act*, that Levy disgorge to the Commission \$59,849 obtained as a result of her non-compliance with Ontario securities law, to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the *Act*; and
- (i) pursuant to section 127.1 of the *Act*, that Levy shall pay jointly and severally with NFF, Singh and Martinez, \$5,000 for costs incurred in the hearing of this matter.

**DATED** at Toronto this 26th day of June, 2013.

*“James D. Carnwath”*

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James D. Carnwath, Q.C.