Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue queen ouest, Toronto ON M5H 3S8

IN THE MATTER OF THE SECURITIES ACT,
R.S.O. 1990, c. S.5, as amended

- and –

IN THE MATTER OF ENERGY SYNDICATIONS INC., GREEN SYNDICATIONS INC., SYNDICATIONS CANADA INC., DANIEL STRUMOS, MICHAEL BAUM and DOUGLAS WILLIAM CHADDOCK

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

Hearing:	October 24, 2013	
Decision:	November 27, 2013	
Panel:	Alan J. Lenczner, Q.C.	- Commissioner and Chair of the Panel
Appearances:	Christie Johnson	- Staff of the Commission
	Justin Safayeni	- For Daniel Strumos
	Shawn Graham	- For Michael Baum
	Douglas William Chaddock	- On his own behalf and on behalf of Energy Syndications Inc., Green Syndications Inc. and Syndications Canada Inc.

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. OVERVIEW

A. Background

[1] This was a hearing (the "**Sanctions and Costs 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 imposing sanctions and costs against Energy Syndications Inc. ("**ESI**"), Green Syndications Canada Inc. ("**GSI**"), Syndications Canada Inc. ("**SCI**"), Daniel Strumos ("**Strumos**"), Michael Baum ("**Baum**") and Douglas William Chaddock ("**Chaddock**") (together, the "**Respondents**"). ESI, GSI and SCI will be collectively referred to as the "**Corporate Respondents**" in this decision.

[2] A Notice of Hearing was issued by the Commission on March 30, 2012 (the "**Notice of Hearing**"), in relation to a Statement of Allegations filed by Staff of the Commission ("**Staff**") on the same day (the "**Statement of Allegations**"). Staff's allegations related to the sale of Land Agreements and Solar Panel Agreements during the time period spanning from October 2008 to April 2011 (the "**Material Time**").

[3] Following a hearing to consider the merits of Staff's allegations (the "**Merits Hearing**"), the Commission's Reasons and Decision on the merits were issued on June 20, 2013 (*Re Energy Syndications et al.* (2013), 36 O.S.C.B. 6500) (the "**Merits Decision**")).

[4] On June 20, 2013, the Commission ordered that a hearing to determine sanctions and costs would be held on September 4, 2013 and set a schedule regarding the written submissions of the parties. This schedule was amended by orders of the Commission dated July 24 and August 20, 2013.

[5] On August 30, 2013, Chaddock, on his own behalf on and on behalf of ESI, GSI and SCI, requested an adjournment of the sanctions and costs hearing (the "**Adjournment Request**") to allow him to obtain and review new evidence, which he submitted would be relevant to his submissions on sanctions and costs. On September 2, 2013, Chaddock filed and served one of the documents on which he intended to rely upon. And on September 3, 2013, Baum also requested an adjournment to allow him to obtain and review the same new evidence identified by Chaddock, which he submitted was also relevant to his submissions on sanctions and costs.

[6] On September 4, 2013, Staff, Chaddock, on his own behalf and on behalf of ESI, GSI and SCI, and Strumos and counsel for Strumos, appeared before the Commission to give oral submissions in respect of the Adjournment Request. Counsel for Baum gave previous notice that neither he nor Baum would attend. After considering the submissions of the parties, the Commission granted the Adjournment Request on September 4, 2013, in order to give the Respondents and Staff a reasonable opportunity to obtain and review the new evidence and to address its admissibility, relevance and the weight it should be given in their written submissions. The sanctions and costs hearing was rescheduled to October 24, 2013.

[7] On October 24, 2013, Staff, Chaddock, Strumos and his counsel and counsel for Baum appeared and made submissions at the Sanctions and Costs Hearing. Chaddock appeared on his own behalf and on behalf of ESI, GSI and SCI. Baum did not appear personally, but he was represented by counsel at the Sanctions and Costs Hearing. Staff, Baum and Strumos provided me with written submissions, which were filed with the Commission before the Sanctions and Costs Hearing.

B. Chaddock's Notice of Constitutional Question

[8] On October 23, 2013, Chaddock filed and served an application record (the "**Application**"), which contained a "Notice of Constitutional Question" that indicated that Chaddock intended to claim a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* (the "**Charter**").[1] Chaddock's Application included a Notice of Constitutional Question, a Notice of Application and the Affidavit of Douglas William Chaddock sworn October 22, 2013.

[9] Chaddock argued that his right to a fair hearing was impaired on two grounds: 1) the failure of Staff to comply with its disclosure obligations, which included the provision of communications between the Respondents and the Commission between January 1, 2006 to the present date; and 2) improper use of Staff's powers in relation to its investigation, which Chaddock argued was one that could result in penal liability, and therefore violated his right against unreasonable search or seizure, pursuant to section 8 of the Charter, and his right to be free from self-incrimination.

[10] On October 24, 2013, prior to the Sanctions and Costs Hearing, I heard the submissions of the parties regarding Chaddock's Application, which was entered into as an exhibit. Chaddock argued that Staff did not provide relevant documentation that would have greatly changed how he approached his defence. He also argued that Staff did not provide full disclosure within a reasonable time period. In his Notice of Application, Chaddock indicated that he was seeking:

(a) an order, if necessary, for leave for abridged service and filing of the Application;

(b) an order staying or, in the alternative, an order granting a new hearing on the merits of the proceedings against Chaddock for abuse of process and for breach of Chaddock's rights under sections 7, 8 and 24 of the *Charter*;

(c) in the alternative, an order requiring the Commission to disclose all relevant documents in the care, possession or control of all agents of all branches of the Commission;

(d) costs of the Application; and

(e) such further Order as the Commission deemed just.

[11] At the hearing, Chaddock also requested a dismissal of findings made against him in the Merits Decision. Counsel for Baum and Strumos indicated that they found the documents

[1] Part I of the *Constitution Act, 1982*, being Schedule B to *the Canada Act 1982 (UK)*, 1982, c. 11.

relevant and that they would support the re-opening of the hearing on the merits, and are supportive of a dismissal of the findings of liability made in the Merits Decision.

[12] Staff submitted that Chaddock did not make any previous requests for the material he was requesting in his Application. Staff also submitted that the case law is quite settled that the investigative powers of the Commission do not violate the *Charter*, given that the proceedings against Chaddock are regulatory in nature. Staff stated that it has not brought any criminal or quasi-criminal charges against Chaddock, under section 122 of the Act.

[13] At the hearing, I dealt with the substance and merits of Chaddock's Application, despite his delay in serving and filing the Application in accordance to the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "***Rules of Procedure***"). After reviewing Chaddock's Application and considering the submissions of the parties, I dismissed Chaddock's Application.

[14] Chaddock most heavily relied upon a letter from counsel of Goodman and Carr LLP ("**Goodman and Carr**") dated April 5, 2006, which requested Staff to confirm that it agreed with his analysis that the "Profitable Plots Product" was not subject to regulation under the Act. Counsel of Goodman and Carr then wrote an e-mail to Staff to confirm an earlier telephone conversation in which Staff advised him that the Profitable Plots Product, as defined in his submission on April 5, 2006, was not an investment contract within the meaning of the Act. Although I was prepared to accept, for the purposes of the Application, that Staff did concur with Goodman and Carr that the Profitable Plots Product was an investment contract within the Act, I found that this did not change any part of the Merits Decision.

[15] First, the arrangement set out in the letter dated April 5, 2006 was markedly different from the arrangement of the Land Agreements that I heard evidence about at the Merits Hearing, particularly the absence of any reference to interest paid to the purchasers of the Land Agreements. Second, as I stated in paragraph 80 of the Merits Decision, "reliance on legal advice does not constitute a defence to the allegations of non-compliance with sections 25 and 53 of the Act".

[16] At the hearing, I also noted that the Panel granted Chaddock's Adjournment Request on September 4, 2013 to allow him to produce relevant documents to the other parties in this proceeding. However, apart from the document that he filed on September 2, 2013, Chaddock did not file or serve any new evidence that he wished to rely upon.

II. The Merits Decision

[17] The misconduct of the Respondents involved the sale of Land Agreements and Solar Panel Agreements. The Land Agreements involved hundreds of small 8 metre x 8 metre contiguous plots of land in the United Kingdom, which were obtained by SCI from a Singaporean company, Profitable Plots Proprietary ("**PPP**"). SCI sought potential investors by running advertisements in *The Toronto Star* and in *The Globe and Mail* by offering high annual interest.

[18] In terms of the Solar Panel Agreements, I found that the purpose for the incorporation of ESI and GSI was "to take advantage of the *Green Energy Act* and the Feed In Tariff program of the Government of Ontario whereby the Ontario Power Authority would pay attractive rates for energy produced by solar and by wind power". Chaddock, through SCI and ESI, also ran

advertisements in *The Toronto Star* and *The Globe and Mail* related to the Solar Panel Agreements. However, the advertisements only referred a six month investment with a promised nine percent return and provided a telephone number to contact SCI or ESI; no mention was made that solar panels would be purchased. When potential investors called the telephone number, they were sent a brochure, directed to a website and/or invited to the company premises to discuss the investment further.

[19] In the Merits Decision, I made the following findings:

(a) In the Material Time, SCI received $2,702,820 from 69 investors who bought 220 individual land plots. It bought back plots for a sum of $290,410.72 and made periodic monthly payments of $177,616.80. The difference of $2,234,792.50 is unaccounted for. The bank account of SCI at the end of the Material Time in April 2011 had a credit balance of $29,973.29.

(b) SCI and ESI took in a net amount of $801,233 from the sale of solar panels. Yvonne Lo, a forensic accountant with Staff traced the use of these funds through the corporate records maintained by SCI and ESI. The entire sum was consumed in the period between June 24, 2010 and April 30, 2011 for corporate purposes including for the payment of salaries and commissions, rent, legal and accounting, various visa payments, etc. I am satisfied that this sum of money maintained the ongoing operations for the ten months in question.

(c) Chaddock was the shareholder, directing mind and controlling officer of the Corporate Respondents. He initiated the Land Agreements and the Solar Panel Agreements. On occasion, he also discussed and negotiated purchases with investors.

(d) Baum and Strumos were the principal sales people in this small operation and conducted negotiations with the investors leading to the sale of securities to them. As a result, they traded in securities. Strumos and Baum often signed the Land Agreements or Solar Panel Agreements on behalf of the Corporate Respondents, particularly when Chaddock was out of town.

(e) In the Material Time, SCI paid $151,181.50 as sales commissions to Baum and $141,255.16 to Strumos. Chaddock received $205,333.28.

(f) Each of the Respondents, between October 2008 and September 28, 2009, traded in securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act (in force prior to September 28, 2009) and contrary to the public interest, and, from September 28, 2009 to April 2011, engaged in the business of trading in securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1) of the Act (in force on and after September 28, 2009) and contrary to the public interest.

(g) Each of the Respondents, between October 2008 and April 2011, distributed securities without filing a preliminary prospectus and prospectus with the

Commission and receiving a receipt for them from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(h) Chaddock, being the directing mind of the Corporate Respondents, authorized, permitted or acquiesced in the Corporate Respondents' non-compliance with Ontario securities law, contrary to section 129.2 of the Act and contrary to the public interest.

[20] Staff also alleged that the Respondents made prohibited representations contrary to subsection 44(2) of the Act; however, I was not satisfied that Staff proved its case on a balance of probabilities and dismissed this allegation.

[21] I note that paragraph 16 of the Merits Decision states that the shares of GSI were owned "as to 25 percent by Strumos". This statement should be corrected to read: "as to 25 percent by Barry Murphy".

III. SUBMISSIONS OF THE PARTIES

A. Staff's Requests for Sanctions and Costs

[22] Staff requests the sanctions and costs set out below against the Respondents and submits that the sanctions they seek are appropriate in all of the circumstances.

[23] With respect to the Corporate Respondents, Staff requests:

(a) pursuant to clauses 2 and 2.1 of subsection 127(1) of the Act, that the Corporate Respondents cease trading in and acquiring securities for a period of 15 years;

(b) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to the Corporate Respondents for a period of 15 years;

(c) pursuant to clause 9 of subsection 127(1) of the Act, the Corporate Respondents shall pay to the Commission an administrative penalty of $50,000 each as a result of their non-compliance with Ontario securities law;

(d) pursuant to clause 10 of subsection 127(1) of the Act, the Corporate Respondent shall, joint and severally with Chaddock, disgorge to the Commission $2,538,255.56 obtained as a result of their non-compliance with Ontario securities law; and

(e) pursuant to section 127.1 of the Act, the Corporate Respondents shall, jointly and severally with Chaddock, pay costs incurred by the Commission in relation to the hearing in this matter in the amount of $85,965.

[24] With respect to Chaddock, Staff requests:

(a) pursuant to clauses 2 and 2.1 of subsection 127(1) of the Act, that Chaddock cease trading in and acquiring securities for a period of 15 years, with the exception that he may trade securities for RRSP accounts after he has fully satisfied all monetary sanctions imposed against him;

(b) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law to not apply to Chaddock for a period of 15 years, except as necessary to permit trading for RRSP accounts in accordance with the above exception;

(c) pursuant to clause 6 of subsection 127(1) of the Act, Chaddock be reprimanded;

(d) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act, Chaddock is ordered to resign any position he holds as a director or officer of any issuer, registrant or investment fund manager;

(e) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Chaddock is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for 15 years;

(f) pursuant to clause 8.5 of subsection 127(1) of the Act, Chaddock is prohibited from becoming or acting as a registrant, investment fund manager or promoter for a period of 15 years;

(g) pursuant to clause 9 of subsection 127(1) of the Act, Chaddock shall pay to the Commission an administrative penalty of $100,000 as a result of his non-compliance with Ontario securities law;

(h) pursuant to clause 10 of subsection 127(1) of the Act, Chaddock shall, in his personal capacity, disgorge to the Commission $205,333.28 and shall, jointly and severally with the Corporate Respondents, disgorge to the Commission $2,538.255.56 obtained as a result of his non-compliance with Ontario securities law; and

(i) pursuant to section 127.1 of the Act, Chaddock shall, jointly and severally with the Corporate Respondents, pay costs incurred by the Commission in relation to the hearing in this matter in the amount of $85,965.

[25] With respect to Baum and Strumos, Staff Requests:

(a) pursuant to clauses 2 and 2.1 of subsection 127(1) of the Act, that Baum and Strumos cease trading in and acquiring securities for a period of 5 years, with the exception that they may trade securities for RRSP accounts after they have fully satisfied all monetary sanctions imposed against them;

(b) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law to not apply to Baum or Strumos for a period

of 5 years, except as necessary to permit trading for RRSP accounts in accordance with the above exception;

(c) pursuant to clause 6 of subsection 127(1) of the Act, Baum and Strumos be reprimanded;

(d) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act, Baum and Strumos are ordered to resign any position they hold as a director or officer of any issuer, registrant or investment fund manager;

(e) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Baum and Strumos are prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for 5 years;

(f) pursuant to clause 8.5 of subsection 127(1) of the Act, Baum and Strumos are prohibited from becoming or acting as a registrant, investment fund manager or promoter for a period of 5 years;

(g) pursuant to clause 9 of subsection 127(1) of the Act, Baum and Strumos shall pay to the Commission an administrative penalty of $15,000 each as a result of their non-compliance with Ontario securities law;

(h) pursuant to clause 10 of subsection 127(1) of the Act, Baum shall disgorge to the Commission $151,181.50 obtained as a result of his non-compliance with Ontario securities law;

(i) pursuant to clause 10 of subsection 127(1) of the Act, Strumos shall disgorge to the Commission $141,255.16 obtained as a result of his non-compliance with Ontario securities law; and

(j) pursuant to section 127.1 of the Act, Baum and Strumos shall pay costs incurred by the Commission in relation to the hearing in this matter in the amount of $10,000 each.

B. Submissions of Chaddock, ESI, GSI and SCI

[26] Chaddock appeared at the Sanctions and Costs Hearing on his own behalf and on behalf of ESI, GSI and SCI. He did not provide written submissions, but he made oral submissions at the hearing.

[27] Chaddock notes that he has had no history of any criminal convictions and submitted that “there are no issues”, except for some Small Claims Court issues that arose from this matter. He submits that he would never have done anything that put him under the scrutiny or the control of the Commission. He agrees that he is on the wrong side of the law, and is “more than sorry” if his clients do not receive their money back.

[28] In response to Staff’s requests for market bans, Chaddock submits that he has abided by the the Commission’s temporary cease trade order and that he has attended compelled interviews

with Staff. He submits that he does not think it is fair to limit a person's future potential as a consequence of an accidental mistake that was not premeditated.

[29] Regarding monetary sanctions, Chaddock requests that the Commission allow him to "unwind" the Land Agreements and the Solar Panel Agreements to allow investors to receive their money back. In relation to the Solar Panel Agreements, Chaddock submits that he will be able to return to work and he will be able to "clear up these panels" by selling them to those who wish to buy the panels, and by providing cash back to those who wish to sell the panels.

[30] In relation to the Land Agreements, Chaddock submits that these plots of land have value and therefore investors will still hold onto them. He requests the Commission to allow him, his companies or agents, to purchase the plots of land from purchasers who wish to sell their plots, so that these purchasers can receive their money. Chaddock submits that this approach will be a better alternative than ordering monetary sanctions against him and the Corporate Respondents, which could end up "wiping out" those companies.

[31] Chaddock submits that an order for costs should not be made against him, since this case will serve as a precedent for land companies to distinguish between a document that is governed by Ontario real estate law from one that is governed by Ontario securities law. He submits that he believed that he was only selling land and that he did not know that he was selling a security.

[32] Chaddock submits that Baum and Strumos were nothing more than employees and that they performed their jobs properly. He states that they never met with any lawyers, apart from the times Strumos delivered document packages and picked up cheques, and that they never went to meet with the Land Registry office in England. Although Baum and Strumos were briefed on how to sell the Land Agreements and Solar Panel Agreements, Chaddock requests that the Commission "leave these two guys be".

C. Submissions of Baum

[33] Baum was hired by PPP in 2006 by its managing partner at the time. Baum first met Chaddock when Chaddock became the managing director of PPP in Canada in approximately 2007. Baum was a Business Sales Manager for SCI and was responsible for selling the vacant land plots to new clients. He was also a Business Sales Manager for GSI and was responsible for selling solar panels to new clients.

[34] Baum did not appear at the Sanctions and Costs Hearing, but his counsel attended the hearing. Baum provided me with written submissions, which included the transcript of his compelled examination that was held on November 8, 2011, pursuant to section 13 of the Act. This transcript was admitted into evidence by the Commission at the Merits Hearing.

[35] Baum does not contest any of the non-monetary sanctions that Staff is seeking, but he does oppose the monetary sanctions and costs Staff is seeking, which he submits are grossly disproportionate and fundamentally unfair considering the circumstances of this case.

[36] As an individual who has no training or experience in the capital markets, Baum argues that it is unreasonable for the Commission to expect him to go through the same level of analysis on

the land and solar panel products, as contained in the Merits Decision, to determine for himself that he engaged in selling securities. He submits that there was no clear guidance before the Merits Decision was issued as to whether the distribution of the Land and Solar Panel Agreements required the Respondents to be registered and to file a prospectus. He also notes that the decision dedicated 34 paragraphs to the determination of whether or not the products sold constituted "investment contracts" under the Act, and that he honestly believed that the business conduct was reviewed and approved by lawyers.

[37] Baum submits that he has been without employment for a period of time and, in his compelled testimony, he indicated that he would need to file for bankruptcy.

D. Submissions of Strumos

[38] In his testimony, Strumos stated that he came across an ad for Profitable Plots Canada in 2006, answered the ad and was hired by Chaddock as the first business development executive in North America. Profitable Plots Canada subsequently became SCI. Strumos was the Client Services Manager of SCI and was responsible for dealing with existing clients. He was not a director, officer or shareholder of the Corporate Respondents. He argues that he had no real involvement in terms of mass marketing or the finances of SCI, which he submits rested in the hands of Chaddock.

[39] Strumos provided me with written submissions on sanctions and costs, and he also testified at the Sanctions and Costs Hearing. The Commission admitted a letter dated January 23, 2012 as an exhibit. The letter was Strumos' response to a letter that he received from Staff that indicated some of the things that the Commission was concerned about regarding the Corporate Respondents, Baum and Strumos.

[40] Strumos submits that he is willing to accept lifetime bans with respect to the non-monetary sanctions proposed by Staff if the Commission agrees to eliminate or reduce Staff's requested monetary sanctions. He submits that the total amount of monetary sanctions that Staff seeks is grossly disproportionate to his circumstances. In the event the Commission finds it appropriate to impose monetary sanctions and a costs order against him, Strumos submits that based on the circumstances of the case and previous decisions of the Commission, the amounts ordered to be paid by him should not exceed $25,000 (disgorgement), $5,000 (administrative penalty) and $1,000 (costs).

[41] Strumos testified that he has no experience in the securities industry or in the capital markets, nor did he ever have any intention of entering the securities industry. He submits that he believed he was selling pieces of real estate and consumer products and that it never crossed his mind that these products were subject to the Act. Strumos also stated that he has no intention on participating in the securities industry in the future. He testified that he has never been investigated or has had charges laid against him by a regulatory body or a tribunal.

[42] Strumos testified that he is currently unemployed. Since his involvement with SCI, he has filled a couple of junior level sales positions, but has not been able to keep any of these positions. He is currently unemployed.

IV. SANCTIONS ANALYSIS

A. The Law on Sanctions

[43] The Commission's mandate as set out at section 1.1 of the Act is: (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets. The primary means for achieving the purposes of the Act as set out at paragraph 2 of section 2.1 of the Act are:

(a) requirements for timely, accurate and efficient disclosure of information;

(b) restrictions on fraudulent and unfair market practices and procedures; and

(c) requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[44] Subsection 127(1) of the Act provides that the Commission may make certain orders in the public interest. The Supreme Court of Canada has commented on the Commission's public interest jurisdiction and described it as follows: "the purpose of an order under section 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets" (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 ("***Asbestos***") at para. 43). In *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 ("***Mithras***"), the Commission stated that:

> …We are not here to punish past conduct; that is the role of the courts…We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.
>
> (*Mithras, supra* at pp. 1610-1611)

[45] The Commission has previously identified the following as some of the factors that should be considered when imposing sanctions:

(a) the seriousness of the allegations proved;

(b) the respondent's experience in the marketplace;

(c) the level of a respondents' activity in the marketplace;

(d) the size of any profit (or loss avoided) from the illegal conduct;

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

(f) the size of any financial sanction or voluntary payment;

(g) the remorse of the respondent; and

(h) any mitigating factors.

(*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 ("***M.C.J.C. Holdings Inc.***") at 1134-1136)

[46] General deterrence is an important factor that the Commission should also consider when determining appropriate sanctions that are both protective and preventative (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60). The Commission will also consider the specific circumstances of each case and ensure that sanctions are proportionate to those circumstances (*M.C.J.C. Holdings Inc.*, *supra* at 1134).

[47] In determining the appropriate sanctions to impose upon the Respondents, I have also reviewed and considered previous decisions of the Commission, including: *Re Axcess Automation LLC* (2010), 33 O.S.C.B. 7384; *Re IMAGIN Diagnostic Centres Inc.* (2011), 34 O.S.C.B. 7530; *Re Maitland Capital Ltd.* (2011), 34 O.S.C.B. 11379; *Re New Found Freedom Financial* (2013), 36 O.S.C.B. 6758; *Re Sabourin* (2010), 33 O.S.C.B. 5299; *Re Simply Wealth Financial Group Inc.* (2013), 36 O.S.C.B. 5099; and *Re Sulja Bros. Building Supplies, Ltd.* (2011), 34 O.S.C.B. 7515.

B. Application of the Factors

[48] In determining the appropriate sanctions in this matter, I must ensure that the sanctions imposed are fair and proportional to the conduct of the Respondents and that they protect both investors and the capital markets in Ontario. Having regard to the factors that are summarized in paragraphs 45 and 46 above, I consider the following to be of particular relevance:

1. The Seriousness of the Allegations

[49] Where a respondent is found to be liable for multiple breaches in Ontario securities law, the Commission has previously considered the seriousness of the breaches both individually and collectively (*Re Rowan* (2009), 33 O.S.C.B. 91 at paras. 161 and 165). The Respondents failed to comply with the registration and prospectus requirements under the Act, and therefore deprived investors with the significant protections afforded by those requirements. Although Staff's allegation in relation to subsection 44(2) of the Act was dismissed, the misconduct of the Respondents resulted in investor harm by the loss of their investment funds. By trading and distributing securities contrary to sections 25 and 53 of the Act, SCI received a net amount of $2,234,792.50 from 69 investors from the sale of land plots during the Material Time, and both SCI and ESI received a net amount of $801,233 from the sale of solar panels.

2. Experience and Level of Activity in the Capital Markets

[50] Although the Respondents were not registered with the Commission in any capacity, a significant sum totalling over $3 million was obtained by the Respondent's misconduct. In the Merits Decision, I found that Chaddock was the shareholder, directing mind and controlling officer of the Corporate Respondents. I also accept that the Respondents' submissions that Baum and Strumos played a subordinate role to Chaddock in connection to the land and solar panel arrangements.

3. Specific and General Deterrence

[51] Baum submits that he does not intend to participate in the securities industry in the future, and that there is little need for specific deterrence in these circumstances. Strumos submits that there is no risk of him re-offending, and thus specific deterrence can be achieved without financial penalties.

[52] For the purpose of general deterrence, both Baum and Strumos submit that individuals who are similar to themselves are employees with no market experience, who put their trust in others. They submit that such individuals can be effectively deterred without the threat of harsh penalties.

4. Remorse and Mitigating Factors

[53] Baum and Strumos submit that they have not had any previous experience or background in the securities industry or in the capital markets. They also submit that, apart from the proceedings against them in this matter, they have not been charged with any regulatory offences. They also submit that they have cooperated with Staff and that they held an honest belief that they were engaged in legitimate and legal business conduct and not in the sale or distribution of securities during the Material Time. They both relied on Chaddock's representation that legal advice was obtained regarding the products they sold. They submit that they now understand that they ought to have investigated the legality of their conduct further.

[54] Baum submits that he never intended to be in the capital markets, which is the reason why he chooses to agree with the requested non-monetary sanctions of Staff. Baum expresses his remorse and his sympathy to any investors that were adversely affected as a result of his employment with the Corporate Respondents and deeply regrets his involvement with them. Baum stated in his compelled testimony on November 8, 2011 that he would need to declare bankruptcy. Baum states that he earned an equivalent of $58,521.87 per annum, which he submits was modest for working on a full-time basis in sales.

[55] In his testimony at the Sanctions and Costs Hearing, Strumos stated that the impact of these proceedings against him and his family have been significant. Since leaving SCI, he has held no significant income-earning positions, and attributes this to the information that is easily found on the internet regarding this proceeding. He does not expect to be able to find anything more than a menial job in the future. He submits that he received, on average, approximate $56,500 per year in commissions, with no additional remuneration, during the Material Time.

[56] Strumos expresses his remorse and sympathy to any investor that was hurt as a result of his employment with the Corporate Respondents, and deeply regrets his involvement as a Client Sales Manager for SCI. He recognizes any wrongdoing and recognizes the seriousness of his contraventions of the Act. Strumos also submits that he regrets what happened to his life and the shame it brought to himself and his family. He also regrets that he did not ask more questions of Chaddock about the operations of the company and the products they were offering.

[57] In the Merits Decision, I stated that "[t]he good faith reliance on well established, well formulated legal advice may be of significant assistance to a Respondent in the consideration of the sanctions that should apply upon a finding of contravention of the Act" (Merits Decision,

supra at para. 83). I find that Baum and Strumos, in good faith, relied on Chaddock's representations that legal advice was obtained to approve of the land and solar panel products. Along with the personal financial situations of Baum and Strumos, I consider their reliance on Chaddock's representations to be a relevant factor in my proportionality analysis on the appropriate sanctions to impose against these respondents.

[58] On the other hand, although I recognize that Chaddock sought legal advice from a reputable law firm, Davis LLP, in the Merits Decision, I held that the reliance on legal advice does not constitute a defence to the allegations of a respondent's non-compliance with sections 25 and 53 of the Act. The Land Agreements were drafted by Lisa Davies, who, at the Material Time, was a real estate associate at Davis LLP. I noted that she was not a securities lawyer, has never practised in that area and was not asked to give an opinion on whether the agreement she drafted constituted the sale of a security. The Solar Panel Agreements were drafted by Andrew Lord, who, at the Material Time, was a junior commercial lawyer at Davis LLP. He was not a securities lawyer, nor was he asked to give an opinion on whether the sale of solar panels, pursuant to the Solar Panel Agreement, constituted a security. In February 2011, Davis LLP provided an opinion which indicated that the outright sale of solar panels to investors would not be a security; however, Davis LLP stated it was not providing an unqualified opinion if there were conditions, such as the obligation to buy back the panels or to put them into a leasing program.

[59] I do not find that Chaddock's reliance on legal advice to be a mitigating factor. The lawyers of Davis LLP who drafted the Land and Solar Panel Agreements were not securities lawyers, nor did they provide any opinions as to whether the agreements constituted the sale of a security. Moreover, the opinion provided by Davis LLP in February 2011 indicated that it was not providing an unqualified opinion if the Solar Panel Agreements contained conditions regarding leasing and buy backs; both of these conditions were included in the brochures promoting the sale of the solar panels, as well as in the Solar Panel Agreements made with investors.

[60] In his oral submissions, Chaddock displayed a complete lack of insight into his violations of the Act. Even though he has had ample time to consider the Merits Decision, he is unwilling to recognize that it was only the promise of high rates of interest that motivated the investors and that fact was evident to him at the time the investments were made. Chaddock showed no remorse for his conduct. Deterrence is a factor that must figure in the sanctions against him.

V. APPROPRIATE SANCTIONS IN THIS MATTER

A. Market Participation Orders

[61] With regards to Chaddock and the Corporate Respondents, Staff seeks market participation bans for a period of 15 years. Chaddock was the directing mind of the Corporate Respondents and orchestrated the operations of the companies, which engaged in illegal conduct spanning a period of 31 months. Although I find this misconduct led to significant losses for investors, I also note that the misconduct did not involve a fraudulent scheme or actions by any of the Respondents. After reviewing the submissions of the parties and previous decisions of the Commission, I find that it is appropriate to impose market participation bans against Chaddock and the Corporate Respondents for a period of 10 years. I also order that Chaddock be

reprimanded and be ordered to resign as a director or officer of any issuer, registrant or investment fund manager.

[62] Given the duration of the bans proposed and the personal circumstances of these individuals, I accept Staff's submission to provide a carve out for Chaddock, Baum and Strumos for personal trading in their registered retirement savings plan ("**RRSP**") accounts, as defined in the *Income Tax Act*, R.S.C. 1985, c. 1, as amended (the "***Income Tax Act***").

[63] Both Baum and Strumos do not contest any of the non-monetary sanctions that Staff is seeking. I agree with Staff's submissions regarding the non-monetary sanctions against Baum and Strumos and find that it is appropriate that Baum and Strumos be subject to market participation bans for a period of 5 years. Similar to Chaddock, I order that Baum and Strumos be reprimanded and be ordered to resign any positions they hold as a director or officer of any issuer, registrant or investment fund manager.

B. Administrative Penalty

[64] Staff requests an administrative penalty of $50,000 against each of the Corporate Respondents, $100,000 against Chaddock, and $15,000 against each Baum and Strumos.

[65] An administrative penalty should be of a magnitude sufficient to ensure effective specific and general deterrence. I find that it is appropriate to order an administrative penalty of $200,000 against Chaddock and the Corporate Respondents, on a joint and several basis.

[66] Both Baum and Strumos submit that an administrative penalty is not necessary to achieve the goals of specific and general deterrence in the circumstances of this case. I find that reduced administrative penalties are appropriate, fair and proportionate to circumstances of Baum and Strumos. Both of these individuals played subordinate roles in the operations of the Corporate Respondents and did not intentionally breach Ontario securities law. I order that Baum and Strumos each pay an administrative penalty of $7,500.

C. Disgorgement

[67] Paragraph 10 of subsection 127(10) of the Act provides that the Commission may order a person or company who has not complied with Ontario securities law to disgorge to the Commission "any amounts obtained as a result of the non-compliance" with Ontario securities law. In addition to the general factors for sanctioning, the Commission set out the following list of non-exhaustive factors to be taken into account when determining a disgorgement in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight***"):

(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*, *supra* at para. 52)

[68] Staff has the onus of proving, on a balance of probabilities, the amounts obtained by a respondent as a result of its non-compliance with the Act (*Limelight*, *supra* at para. 53). Staff submits that a total amount of $3,036,025.50 was obtained by selling the securities of SCI and ESI, which includes the net amounts raised from the sale of the land and solar panel products, along with the salary draws of Chaddock and the sales commissions of Baum and Strumos. To determine its requested disgorgement amount against Chaddock and the Corporate Respondents, as well as to avoid "double dipping", Staff deducted the amounts personally obtained by Chaddock, Baum and Strumos from the total amount of $3,036,025.50 (Transcript, October 24, 2013, p. 29, lines 7-16).

[69] Baum submits that in these circumstances, disgorgement of his commissions is not an appropriate or fair sanction. Strumos submits that a disgorgement order is not appropriate, especially since such an order is not necessary to ensure a specific or general deterrent effect. He submits that deterrence can be accomplished through the non-financial sanctions that Staff seeks and, at most, a modest financial penalty.

[70] Both Baum and Strumos submit that the total commissions they earned are modest wages for their roles in SCI during the Material Time. Baum received $151,181.50 in sales commissions during the Material Time and received plots of land in Concorde Village as a bonus. He submits that there is no evidence that he received any actual value for these plots.

[71] I agree with Staff's analysis of the amounts obtained and find that the following amounts were obtained by the Respondents as a result of their non-compliance with Ontario securities law, which are supported by my findings in the Merits Decision:

(a) a net amount of $2,234.792.50 from the sale of the Land Agreements;

(b) a net amount of $801,233 from the sale of the Solar Panel Agreements;

(c) $205,333.28 received by Chaddock;

(d) $151,181.50 in sales commissions for Baum; and

(e) $141,255.16 in sales commissions for Strumos.

[72] I note that neither ESI nor GSI had a bank account, and both operated from the same premises of SCI. In the Merits Decision, I found that until the summer of 2010, SCI did not

engage in any other revenue producing business, apart from raising funds from the sale of the Land Agreements. In relation to the solar panel products, I found that the only way which ESI or GSI could pay back investors was to sell more Solar Panel Agreements, and that these companies had no other source of monies.

[73] I agree with Staff that it does not appear likely that investors in the land and solar panel arrangements will be able to obtain redress, given the dissipation of their funds and the fact that the bank account of SCI, through which funds of both arrangements were directed, had a balance of only $29,973.29 at the end of the Material Time.

[74] I am satisfied that based on a balance of probabilities a total of $3,036,025.50 was obtained by the Respondents as a result of their non-compliance with Ontario securities law.

[75] As discussed in paragraph 29, above, Chaddock submits that as an alternative to imposing monetary sanctions and costs against himself and the Corporate Respondents, the Commission allow Chaddock to "unwind" the land and solar panel arrangements. I am not prepared to make such an order, nor do I find that it is in the public interest to do so.

[76] Consequently, I find that Chaddock and the Corporate Respondents should be ordered to disgorge the entire $2,538,255.56 that they obtained as a result of their non-compliance. I also order that Chaddock, in his personal capacity, disgorge to the Commission $205,333.28, which he received from SCI during the Material Time.

[77] Regarding Baum and Strumos, I find that it is fair and proportionate to order partial disgorgement orders against them. As discussed above, Chaddock was the directing mind of the Corporate Respondents, whereas Baum and Strumos played subordinate roles to Chaddock in the arrangements. They were not directors or officers of the Corporate Respondents. It was Chaddock who initiated and created the Land Agreement and the Solar Panel Agreement products, along with drafting and reviewing related marketing material. I also accept their submissions that: 1) they believed in the representations of Chaddock that Land Agreements and the Solar Panel Agreements did not constitute securities; 2) lawyers had "signed off" on the land and solar panel arrangements; and 3) they should have asked more questions of Chaddock regarding the mechanics behind the arrangements and the products they were selling.

[78] It would not be fair to impose full recovery or full disgorgement on either of these respondents. I also note that I dismissed Staff's allegation that the Respondents made prohibited representations contrary to subsection 44(2) of the Act. Staff acknowledges that the conduct underlying these breaches was not found to involve any kind of deliberate deceit, nor was it fraudulent or misleading (Transcript, October 24, 2013, p. 55, lines 16-18).

[79] As such, I order that Baum and Strumos disgorge an amount of $50,000 each.

[80] I order that any amounts paid to the Commission in satisfaction of the disgorgement orders made against the Respondents be designated for allocation or for use by the Commission, pursuant to subsection 3.4(2)(b) of the Act.

VI. COSTS ANALYSIS

[81] Pursuant to section 127.1 of the Act, the Commission may impose an order on a person or company to pay the costs of an investigation or hearing if the Commission is satisfied that the person or company has not complied with Ontario securities law or has not acted in the public interest.

[82] At paragraph 29 of *Re Ochnik* (2006), 29 O.S.C.B. 5917 ("***Ochnik***"), the Panel identified criteria that was considered by the Commission in past decisions when awarding costs. Rule 18.2 of the *Rules of Procedure* also sets out a number of factors that a Panel may consider in exercising its discretion to order costs pursuant to section 127.1 of the Act. Considering the submissions of the parties, the factors set out in *Re Ochnik* and in Rule 18.2 of the *Rules of Procedure*, I find the following factors especially relevant in my determination of costs:

(a) the Adjournment Request was granted and resulted in rescheduling the Sanctions and Costs Hearing to October 24, 2013;

(b) no new documents were filed as evidence by Chaddock in relation to his Adjournment Request;

(c) Chaddock's Application regarding a Notice of Constitutional Question was filed and served the day before the Sanctions and Costs Hearing, and was dismissed by the Commission;

(d) Baum cooperated with Staff and did not contest the facts put forth by Staff;

(e) Baum did not attend the Merits Hearing or the Sanctions and Costs Hearing, but he was represented by counsel in the latter;

(f) Strumos participated in a reasonable, informed and well-prepared manner;

(g) Strumos requested an extension for the Respondents to file and serve their written submissions, and such request was granted on July 24, 2013;

(h) Baum requested an extension to file and serve his written submissions, and such request was granted on August 20, 2013;

(i) the Notice of Hearing was issued by the Commission on March 30, 2012 to notify the Respondents that Staff would be seeking costs of the Commission investigation and the hearing; and

(j) Staff's allegation pursuant to subsection 44(2) of the Act was dismissed.

[83] Having reviewed Staff's Bill of Costs and having reviewed the parties' submissions, previous case law and the factors under Rule 18.2 of the *Rules of Procedure*, I find that it is appropriate to order Chaddock and the Corporate Respondents, jointly and severally, to pay $50,000 for costs, and that Baum and Strumos each pay $2,500 for costs.

VII. CONCLUSION

[84] For the reasons above, and I find that the orders for sanctions and costs set out below are appropriate and are in the public interest. They will serve as a specific and general deterrent by sending a message to both the Respondents and like-minded individuals that such conduct will result in meaningful sanctions by the Commission.

[85] I will issue a separate order giving effect to the decision on sanctions and costs, as follows:

[86] With respect to the Corporate Respondents, I hereby order:

(a) pursuant to clauses 2 and 2.1 of subsection 127(1) of the Act, that the Corporate Respondents shall cease trading in and acquiring securities for a period of 10 years;

(b) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law shall not apply to the Corporate Respondents for a period of 10 years;

(c) pursuant to clause 9 of subsection 127(1) of the Act, that the Corporate Respondents shall, jointly and severally with Chaddock, pay an administrative penalty of $200,000 as a result of their failure to comply with Ontario securities law, to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

(d) pursuant to clause 10 of subsection 127(1) of the Act, that the Corporate Respondent shall, joint and severally with Chaddock, disgorge to the Commission $2,538,255.56 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

(e) pursuant to section 127.1 of the Act, that the Corporate Respondents shall, jointly and severally with Chaddock, pay costs incurred by the Commission in relation to the hearing in this matter in the amount of $50,000.

[87] With respect to Chaddock, I hereby order:

(a) pursuant to clauses 2 and 2.1 of subsection 127(1) of the Act, that Chaddock shall cease trading in and acquiring securities for a period of 10 years, with the exception that he may trade and acquire securities for his RRSP accounts after the administrative penalty at subparagraph 87(g) and disgorgement at subparagraph 87(h) ordered against him below are paid in full;

(b) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law shall not apply to Chaddock for a period of 10 years, except as required to trade in or acquire securities in accordance with the exception provided above;

(c) pursuant to clause 6 of subsection 127(1) of the Act, that Chaddock be reprimanded;

(d) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act, that Chaddock is ordered to resign any position he holds as a director or officer of any issuer, registrant or investment fund manager;

(e) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, that Chaddock is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for 10 years;

(f) pursuant to clause 8.5 of subsection 127(1) of the Act, that Chaddock is prohibited from becoming or acting as a registrant, investment fund manager or promoter for a period of 10 years;

(g) pursuant to clause 9 of subsection 127(1) of the Act, that Chaddock shall, jointly and severally with the Corporate Respondents, pay an administrative penalty of $200,000 as a result of his failure to comply with Ontario securities law, to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

(h) pursuant to clause 10 of subsection 127(1) of the Act, that Chaddock shall, in his personal capacity, disgorge to the Commission $205,333.28 and shall, jointly and severally with the Corporate Respondents, disgorge to the Commission $2,538.255.56 obtained as a result of his 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 Chaddock shall, jointly and severally with the Corporate Respondents, pay costs incurred by the Commission in relation to the hearing in this matter in the amount of $50,000.

[88] With respect to Baum and Strumos, I hereby order:

(a) pursuant to clauses 2 and 2.1 of subsection 127(1) of the Act, that Baum and Strumos shall cease trading in and acquiring securities for a period of 5 years, with the exception that they may trade and acquire securities for their RRSP accounts after the administrative penalties at subparagraph 88(g) and disgorgements at subparagraph 88(h) ordered against them below are paid in full;

(b) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law shall not apply to Baum or Strumos 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 clause 6 of subsection 127(1) of the Act, that Baum and Strumos be reprimanded;

(d) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act, that Baum and Strumos are ordered to resign any position they hold as a director or officer of any issuer, registrant or investment fund manager;

(e) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, that Baum and Strumos are prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for 5 years;

(f) pursuant to clause 8.5 of subsection 127(1) of the Act, that Baum and Strumos are prohibited from becoming or acting as a registrant, investment fund manager or promoter for a period of 5 years;

(g) pursuant to clause 9 of subsection 127(1) of the Act, that Baum and Strumos shall pay to the Commission an administrative penalty of $7,500 each as a result of their failure to comply with Ontario securities law, to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

(h) pursuant to clause 10 of subsection 127(1) of the Act, that Baum and Strumos shall disgorge to the Commission $50,000 each 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 Baum and Strumos shall pay costs incurred by the Commission in relation to the hearing in this matter in the amount of $2,500 each.

[89] I wish to thank Messrs. Safayeni and Graham who, through the Lawyers Assistance Program, very ably represented their clients Strumos and Baum. Their assistance was greatly appreciated by me and was helpful to their clients.

Dated at Toronto this 27th day of November, 2013.

"Alan Lenczner"

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Alan J. Lenczner, Q.C.