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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
MAJESTIC SUPPLY CO. INC., SUNCASTLE DEVELOPMENTS CORPORATION, HERBERT ADAMS, STEVE BISHOP, MARY KRICFALUSI, KEVIN LOMAN and CBK ENTERPRISES INC.

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

Hearing:	March 15 and May 2, 2013	
Decision:	November 29, 2013	
Panel:	Edward P. Kerwin	- Commissioner and Chair of the Panel
	Paulette L. Kennedy	- Commissioner
Appearances:	Derek Ferris	- For Staff of the Ontario Securities Commission
	Andrew Furguiele	- For Herbert Adams
	Kevin Richard	- For Kevin Loman
	Unrepresented	- Steve Bishop, Mary Kricfalusi, Majestic Supply Co. Inc., Suncastle Developments Corporation and CBK Enterprises Inc.

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I. INTRODUCTION

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether it is in the public interest to make an order with respect to sanctions and costs against Majestic Supply Co. Inc. ("**Majestic**"), Suncastle Developments Corporation ("**Suncastle**"), Herbert Adams ("**Adams**"), Steve Bishop ("**Bishop**"), Mary Kricfalusi ("**Kricfalusi**"), Kevin Loman ("**Loman**") and CBK Enterprises Inc. ("**CBK**") (collectively, the "**Respondents**").

[2] The hearing on the merits began on November 7, 2011 and continued from time to time over the course of 11 hearing days until May 18, 2012 (the "**Merits Hearing**"). The decision on the merits was issued on February 21, 2013 (*Re Majestic Supply Co. Inc. et al.* (2013), 36 O.S.C.B. 2104 (the "**Merits Decision**")).

[3] After the release of the Merits Decision, a separate hearing to consider submissions from Staff and the Respondents regarding sanctions and costs the was held on March 15, 2013 and reconvened on May 2, 2013, to determine certain procedural matters (the "**Sanctions and Costs Hearing**").

[4] On March 15, 2013, Staff, Bishop, on behalf of himself and Majestic, Kricfalusi and counsel for Adams appeared, tendered evidence and/or made submissions at the Sanctions and Costs Hearing. Counsel for Loman appeared on that day and did not make oral submissions, but was later granted leave on May 2, 2013 to file written submissions on sanctions and costs, pursuant to Rule 1.6(2) of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "***Rules of Procedure***"). Bishop filed further written submissions on May 10, 2013.

[5] CBK and Suncastle were not represented and did not participate in the Sanctions and Costs Hearing. However, as noted above, Kricfalusi, Suncastle's president and director, did appear on her own behalf. In the Merits Decision, we decided that we were satisfied that Staff served the Respondents with notice of the hearing. We are also satisfied by the Affidavit of Sharon Nicolades, sworn March 14, 2013, that Staff served the Respondents with Staff's written submissions on sanctions and costs. We were entitled to proceed with the hearing in the absence of the Respondents who did not appear, in accordance with subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended.

II. THE MERITS DECISION

[6] In the Merits Decision, we concluded that:

> (a) Majestic, Suncastle, Adams, Bishop, Kricfalusi, Loman and CBK traded in Majestic securities and/or engaged in acts in furtherance of trades in Majestic securities without having been registered under the Act to do so, contrary to former subsection 25(1)(a) of the Act and contrary to the public interest;
>
> (b) Majestic, Suncastle, Adams, Bishop, Kricfalusi, Loman and CBK engaged in an illegal distribution of securities contrary to subsection 53(1) of the Act and contrary to the public interest;

(c) Adams made deceptive representations to induce an investor to purchase Majestic securities contrary to the public interest;

(d) Majestic, through Bishop, and Adams and Bishop, in their individual capacities, made prohibited representations with respect to the future listing or quoting of Majestic shares on a stock exchange or quotation system, contrary to subsection 38(3) of the Act and contrary to the public interest;

(e) Adams and Bishop authorized, permitted or acquiesced in commission of violations of securities law by Majestic, and are deemed, pursuant to section 129.2 of the Act, to have not complied with Ontario securities law and to have acted contrary to the public interest; and

(f) Adams and Kricfalusi authorized, permitted or acquiesced in commission of violations of securities law by Suncastle, and are deemed, pursuant to section 129.2 of the Act, to have not complied with Ontario securities law and to have acted contrary to the public interest.

(Merits Decision, *supra* at para. 223)

III. SANCTIONS AND COSTS REQUESTED

[7] Staff has requested that the following sanctions and costs orders be made against Majestic and Suncastle:

(a) that trading in securities by Majestic and Suncastle, cease permanently;

(b) that the acquisition of any securities by Majestic and Suncastle be prohibited permanently;

(c) that any exemptions contained in Ontario securities law not apply to Majestic and Suncastle permanently;

(d) that Majestic and Suncastle pay $200,000 each as administrative penalties, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(e) that Suncastle disgorge to the Commission $1,832,682 obtained as a result of its non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(f) that Majestic and Suncastle pay $75,000 each for costs incurred in the investigation and hearing of this matter.

[8] Staff has requested that the following sanctions and costs orders be made against CBK:

(a) that trading in securities by CBK cease for a period of 5 years;

(b) that the acquisition of any securities by CBK be prohibited for a period of 5 years;

(c) that any exemptions contained in Ontario securities law not apply to CBK for a period of 5 years;

(d) that CBK pay an administrative penalty of $10,000 to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(e) that CBK pay $5,000 for costs incurred in the investigation and hearing of this matter.

[9] Staff has requested that the following sanctions and costs orders be made against Adams, Bishop, Loman and Kricfalusi:

(a) that trading in securities by Adams cease for a period of 20 years, Bishop cease for a period of 15 years, Loman cease for a period of 12 years and Kricfalusi cease for a period of 10 years;

(b) that the acquisition of any securities by Adams be prohibited for a period of 20 years, Bishop be prohibited for a period of 15 years, Loman be prohibited for a period of 12 years and Kricfalusi be prohibited for a period of 10 years;

(c) that any exemptions contained in Ontario securities law not apply to Adams for a period of 20 years, Bishop for a period of 15 years, Loman for a period of 12 years and Kricfalusi for a period of 10 years;

(d) that Adams, Bishop, Loman and Kricfalusi be reprimanded;

(e) that Adams, Bishop, Loman and Kricfalusi resign all positions as directors or officers of an issuer, registrant or investment fund manager;

(f) that Adams be prohibited for a period of 20 years, Bishop be prohibited for a period of 15 years, Loman be prohibited for a period of 12 years and Kricfalusi be prohibited for a period of 10 years from becoming or acting as officers or directors of any issuer, registrant or investment fund manager;

(g) that Adams be prohibited for a period of 20 years, Bishop be prohibited for a period of 15 years, Loman be prohibited for a period of 12 years and Kricfalusi be prohibited for a period of 10 years from from becoming or acting as registrants, investment fund managers or as promoters;

(h) that Adams pay $300,000, Bishop pay $100,000, Loman pay $100,000 and Kricfalusi pay $50,000 as administrative penalties to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(i) that Adams disgorge $1,001,000, Loman disgorge $228,000 and Kricfalusi disgorge $60,000 to the Commission as amounts obtained as a result of their non-compliance

with Ontario securities law, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(j) that Adams pay $75,000, Bishop pay $50,000, Loman pay $50,000 and Kricfalusi pay $25,000 for costs incurred in the investigation and hearing of this matter.

IV. POSITIONS OF THE PARTIES

A. Staff's submissions

[10] Staff's submissions on sanctions focused on each respondent's level of participation in the conduct that led to unregistered trading and the illegal distribution of Majestic shares. Staff argues that the conduct of the Respondents involves significant contraventions of the Act, including significant amounts raised from approximately 137 investors as a result of unregistered trading of Majestic shares. Staff also submits that the Respondents' unlawful activity was prolonged and widespread. From 2006 to 2008 (the "**Material Time**") Majestic issued shares from treasury, raising approximately $2.1 million, and further Majestic shares were sold in the secondary market to 98 investors. Staff takes the position that the proposed sanctions are proportionate and will serve as a specific and general deterrent. Specifically, Staff argues that deterrence is achieved through removal of the Respondents from the capital markets, requiring disgorgement of funds obtained from investors in breach of the Act and requiring the Respondents to pay administrative monetary penalties that will signal both to the Respondents and to other like-minded individuals that similar conduct will result in serious sanctions.

[11] Staff submits that the Respondents' conduct has been so harmful to investors that Adams, Bishop, Kricfalusi and Loman (the "**Individual Respondents**") should be prevented from participating in the capital markets for periods ranging from 10 to 20 years. Staff relies on the Ontario Divisional Court's decision in *Erikson*, which provides that "[p]articipation in the capital markets is a privilege, not a right" (*Erikson v. Ontario (Securities Commission)*, [2003] OJ No. 593 ("***Erikson***") at paras. 55-56). Staff also relies on *Ochnik*, a Commission decision that imposed permanent trading bans, loss of exemptions and director and officer bans in a case where the panel considered that the respondents engaged in unregistered trading and took advantage of financially vulnerable people (*Re Ochnik*, 29 O.S.C.B. 3929 at paras. 108-116). Staff does not oppose limited carve-outs in trading bans for Bishop, Loman or Kricfalusi to permit them to trade in securities listed on defined stock exchanges within their Registered Retirement Savings Plan(s) ("**RRSP(s)**"), as long as the carve-outs are conditional on prior payment of administrative penalty and disgorgement amounts ordered against them.

[12] Staff applies the factors articulated in *Limelight Sanctions* in support of its submissions that disgorgement should be ordered (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight Sanctions***") at para. 52). Staff relies upon the Commission's determination in that case that "all money illegally obtained from investors can be disgorged, not just the 'profit' made as a result of the activity" (*Limelight Sanctions, supra* at para. 49). Staff submits that disgorgement sought should be ordered based on the following factors:

a) the entire amount obtained was as a result of unregistered trading;

b) the misconduct was serious and investors were seriously harmed by the loss of their funds;

c) amounts paid are amounts ascertained and verified by investors records and bank documents;

d) it does not appear likely that investors will be able to obtain redress; and

e) a disgorgement order for the amounts obtained provides significant specific and general deterrence.

[13] On the matter of administrative penalties, Staff relies upon *Maple Leaf Sanctions*, among other cases, in support of its submissions that certain of the Respondents should be imposed higher monetary penalties than others (*Re Maple Leaf Investment Fund Corp. et al.* (2012), 35 O.S.C.B. 3075 ("***Maple Leaf Sanctions***")). *Maple Leaf Sanctions* dealt with a matter that involved breaches of sections 25, 38, 53 and 126.1 of the Act, but in the case of one respondent, against whom no fraud finding was made, the Commission nevertheless imposed a $200,000 administrative penalty (*Maple Leaf Sanctions, supra* at paras. 8 and 44). Specifically, Staff submits *Maple Leaf Sanctions* was analogous in terms of investors being misled. Staff also argues that the decision is instructive in pointing out that a carve-out is not appropriate until the Commission has some idea of what RRSP accounts or pensions are being considered (*Maple Leaf Sanctions, supra* at para. 23). Staff also relies upon the Commission's decision in *Limelight Sanctions* that imposed $200,000 administrative penalties on each of the principals who engaged in repeated violations of the Act, including unregistered trading and acts of dishonesty (*Limelight Sanctions, supra* at paras. 62, 69, 75 and 78).

[14] Staff submits that financial sanctions should be ordered regardless of whether it can be shown that the Respondents currently have the ability to pay. In addition to the fact that it is only one factor to be considered in determining sanctions, Staff submits that if the Respondents do not currently have the ability to pay, the order will remain in place in the event that Staff subsequently becomes aware of assets against which the order can be enforced. Staff also submits that reducing the quantum of financial sanctions due to inability to pay is inconsistent with previous Commission decisions and it would encourage respondents to hide their assets to mislead Staff with respect to their current financial situation.

[15] With respect to costs, Staff made general submissions in reliance on section 127.1 of the Act and Rule 18.2 of the Commission's *Rules of Procedure*. Staff sought total investigative and hearing costs of $365,351.31, which includes the fees of one litigation counsel and the lead investigator beginning August 17, 2009. Staff's request also includes disbursement costs for court reporting, videoconferences for Alberta witnesses and travel expenses for the purpose of interviewing investor witnesses in Alberta. Staff did not claim the cost of its accountant or the assisting investigator. Staff submits that the investigation costs were higher in this case as a result of a number of factors, including:

a) the number of primary and secondary market trades in Majestic shares;

b) the need to obtain and analyze trading, financial and banking records for Majestic and Suncastle;

c) the sales of shares to investors in Alberta and Saskatchewan and the decision to travel to Alberta; and

d) the lack of admissions by any of the Respondents.

[16] Staff submits that Adams and Bishop did participate in voluntary interviews, but nevertheless still refused to admit any of the alleged facts. Further, Staff submits that Loman took a position that was ultimately rejected by the Commission. In oral submissions, Staff acknowledged that a large portion of the investigation did not deal with Staff's case against Loman. Staff took the position that it would be unfair to order joint and several payment of costs and that a proportional division among the Respondents would be more appropriate.

[17] Individual submissions for each of the Respondents are elaborated below.

i. Adams

[18] Staff submits that Adams engaged in significant contraventions of the Act, including making material misrepresentations: (i) to induce a Majestic investor into purchasing shares; and (ii) that Majestic would go public. Further, Staff submits Adams also made deceptive representations, which amounted to conduct contrary to the public interest. Staff submits that Adams's misrepresentations aggravate the unregistered trading by him and increases the seriousness of his conduct.

[19] Staff submits that Adams was the driving force behind Majestic and Suncastle and the beneficiary of the sale of shares in the secondary market. Adams, directly and indirectly through CBK, sold his own Majestic shares to investors. Staff indicated that a number of investors who bought Majestic shares from Adams were low-income friends of investor D.B., who clearly did not meet the criteria to qualify as accredited investors. Given that Adams breached subsections 25(1)(a), 38(3) and 53(1) of the Act, acted contrary to the public interest by making deceptive representations to an investor in order to induce a sale of shares, and considering the role that Adams had as director and officer of both Majestic and Suncastle in terms of authorizing, permitting and/or acquiescing in breaches by those companies within the meaning of section 129.2 of the Act, Staff submits that 20-year bans from market participation and corporate positions are appropriate.

[20] On the matter of disgorgement, Staff provided several schedules detailing amounts obtained by Adams through sales of shares. Staff submits that $480,000 were paid directly to Adams for sales of Suncastle shares, $130,000 were received by Adams from loan and conversion agreements resulting in the transfer of Majestic shares, $166,000 were received by Adams through sales of his own Majestic shares and $225,000 were received by Adams as compensation for sales of his Majestic shares held in trust by CBK. Therefore, Staff requests that the Commission order Adams to disgorge a total of $1,001,000 that he received as a result of his non-compliance with Ontario securities law. In support of its submission that Adams should disgorge $1,001,000, Staff submitted that the amount sought is reasonably ascertainable.

[21] Staff also submits that an administrative penalty in the amount of $300,000 is appropriate for Adams when considering the seriousness of his conduct and relevant other cases. Specifically, Staff pointed to the Commission's finding that Adams committed multiple and

repeated violations the Act, engaged in deceptive representations to induce an investor to purchase Majestic securities contrary to the public interest and played an integral role in selling shares to investors, as a controlling person in charge of Suncastle and Majestic. Staff argues that Adams's conduct warrants a strong deterrent message to Adams and other like-minded individuals. Staff directs the panel to the decision in *Sabourin*, a matter in which misconduct by the respondents was found to include numerous breaches of the Act over a period of years, where the Commission indicated that "a respondent who commits multiple breaches of the Act should know that continuing breaches of the Act will have consequences" and that in determining administrative penalties the panel must consider both the specific conduct of the respondent and administrative penalties imposed in other similar cases (*Re Sabourin* (2010), 33 O.S.C.B. 5299 ("***Sabourin Sanctions***") at para. 75). Staff relies on *Limelight Sanctions*, in which the Commission ordered a respondent to pay an administrative penalty of $200,000, in a case in which it was found that investors had been misled as a result of a boiler room operation (*Limelight Sanctions*, *supra* at para. 78). Staff argued that the matter in that case is analogous to this case in which investors were misled by Adams with respect to the existence of patents held by Majestic and told that Majestic's public share value would increase and the securities would go public. These factors, Staff argues, support an order that Adams pay an administrative penalty of $300,000.

[22] Staff further submits that the predominant portion of the investigation dealt with Majestic, Suncastle and Adams. As a result, Staff submits it attributed $225,000 of the investigation and hearing costs, which is approximately two thirds of the total sought, to be divided amongst those three respondents. Therefore, Staff requests an order that Adams pay $75,000 for costs incurred by the Commission.

ii. Bishop

[23] Staff submits that Bishop engaged in significant contraventions of the Act, including making material misrepresentations to induce Majestic investors into purchasing shares and that Majestic would go public. Further, Staff submits that as a former registrant Bishop knew or ought to have known the importance of the registration requirement and that he was breaching Ontario securities law by selling Majestic shares to investors. Staff also submits that Bishop misled investor J.L.1. about the existence of patents owned by Majestic, which aggravates the unregistered trading by him and increases the seriousness of his conduct. Further, Bishop admitted that he raised approximately $2.5 million from 60 Majestic investors.

[24] Staff also acknowledges that Bishop was the original complainant to the Commission and the police and that he cooperated with Staff, which are mitigating factors. However, Staff argues Bishop did not settle and never testified. Further, Staff argues that as a former registrant for approximately 20 years, who clearly knew the registration requirements, Bishop still sold shares to the public, which caused serious harm to investors. Given that Bishop, a former registrant, breached subsections 25(1)(a), 38(3) and 53(1) of the Act and considering Bishop's role as director and officer of Majestic in terms of acquiescing in breaches by Majestic within the meaning of section 129.2 of the Act, Staff submits that 15-year bans from market participation and corporate positions are appropriate.

[25] Staff directed the Panel to two commission agreements, which indicate that Bishop was to be compensated in commissions and Majestic shares for sales of Majestic and Suncastle securities. However, Staff submits that the general ledgers of Majestic and Suncastle in evidence do not attribute amounts received by Bishop as specific commissions. In total, Staff submitted that Bishop received approximately $56,000 from Majestic and $31,000 from Suncastle during the Material Time, but expressly noted that while Bishop was compensated in Majestic shares he did not resell any of his own shares. As a result, Staff does not seek disgorgement from Bishop.

[26] Staff submits that Bishop should pay a $100,000 administrative penalty. Staff argues he committed multiple and repeated violations and played a key role in recruiting and selling shares to Majestic investors. However, Staff again notes that Bishop was the original complainant, was cooperative and did not sell his own Majestic shares to the public.

[27] Staff also seeks an order that Bishop pay $50,000 for costs incurred by the Commission. Staff recognized that Bishop was the original complainant, but that ultimately Bishop did not settle, which caused the Commission to incur hearing costs.

iii. Kricfalusi

[28] Staff submits that 10-year bans from market participation and corporate positions are appropriate for Kricfalusi, who engaged in personal trading, through five loan conversions that caused her to receive $60,000 directly from investors. Further, Staff argues that the length of the bans is appropriate given Kricfalusi's involvement as President and Director of Suncastle and a person who held signing authority for the company. Staff directed the Panel to a number documents in which Kricfalusi signed on behalf of Suncastle, including: Majestic share purchase agreements, cheques and corporate resolutions. Staff relies on the Commission's finding that Kricflausi acquiesced or participated in breaches of the Act by Suncastle, but notes that there was no finding of fraud on the part of Kricfalusi in this matter.

[29] Taking into account the conduct described above, Staff seeks an administrative penalty of $50,000 and a disgorgement order of $60,000, for the amount received by Kricfalusi directly from investors. Staff also seeks an order that Kricfalusi pay $25,000 for costs incurred by the Commission.

iv. Loman

[30] Staff submits that Loman engaged in significant contraventions of the Act and that, as a former registrant, he knew or ought to have known the importance of the registration requirement and that he was breaching Ontario securities law by selling Majestic shares to investors. Staff also submits that Loman misled investor R.R. about the existence of patents owned by Majestic, which aggravates the unregistered trading by him. However, Staff also notes that Loman was himself an investor, which is a mitigating factor.

[31] Staff requests 12-year bans from market participation and corporate positions for Loman. Staff argues that the bans are warranted because Loman's conduct in breach of the Act resulted in losses by a number of Alberta investors, in circumstances where Loman was a former registrant with the Alberta Securities Commission (the "**ASC**"). Staff submits that Loman was clearly aware of the registration and prospectus requirements of the Act and in 2009 had

undertaken to cease trading and refrain from acting as a director and/or an officer of any issuer, carrying on business in Alberta, and had agreed to pay certain amounts in a settlement of a matter with the ASC (*Re Essen Capital Inc.*, 2009 ABASC 530).

[32] Staff submits that Loman, as a commission salesperson of Majestic shares, should be ordered to disgorge $228,000 that he received as a result of his non-compliance with the Act and specifically his involvement with the Alberta investors. Staff argues that disgorgement is warranted because Loman committed repeated violations, caused serious harm to investors and his testimony was not accepted by the Commission. Staff relies on a document at Exhibit U8 of the Merits Hearing, entitled "Kevin Loman transactions", which indicates that $228,000 is the total commission from certain sales of Majestic shares. Staff further relies upon a response at Merits Exhibit U11 from Adams's then counsel to Staff's enforcement notice, which lists 31 investors who are represented to have been introduced through "Bishop and/or Loman", 21 of which overlap with the document entitled "Kevin Loman transactions".

[33] Staff applied the five factors articulated in *Limelight Sanctions* at para. 52, in support of its submission that Loman should disgorge $228,000. In particular, Staff argues that the evidence demonstrates payments to Loman and that $228,000 was obtained as commissions in breach of the Act. Further, Staff submits that the conduct was serious, resulting in losses by a number of Alberta investors. Staff also argued that the amount obtained by Loman is reasonably ascertainable from the "Kevin Loman transactions" document and bank documents, which confirm that monies totaling $228,000 were paid to Loman or his company Essen Inc. Staff submits that the disgorgement order should have a deterrent effect on Loman and other market participants who might engage in an illegal distribution of securities. Lastly, Staff indicates that there is evidence one Alberta investor is involved in litigation with Loman, but there is no evidence of the status of that litigation or the likelihood that redress could be obtained by investors who suffered losses.

[34] It is Staff's position that Loman should pay an administrative penalty of $100,000 for conduct in breach of the Act relating to approximately 30 investors. Staff submits that Loman's refusal to accept responsibility, his previous position as a registrant and a previous three-year trading ban suggest that the administrative penalty sought is appropriate and proportionate to his conduct.

[35] Staff also seeks an order that Loman pay $50,000 for costs incurred by the Commission. Staff argues that the costs reflect the fact that Loman's testimony was ultimately not accepted by the Panel and he would not admit to being a salesperson, which put a significant burden on Staff in terms of calling the Alberta witnesses. Staff also argued that Loman brought in approximately one fifth of the Majestic investors.

v. Majestic

[36] Staff submits that Majestic engaged in significant contraventions of the Act, including unregistered trading, the distribution of its securities from treasury that raised approximately $2.1 million and making material misrepresentations, through Bishop, to induce Majestic investors into purchasing shares, including that Majestic would go public. Staff argues that investors were misled as to the attributes of Souken water-based ink, the performance of refillable cartridges

and the existence of patents. Staff also submits that the prohibited representations increase the seriousness of Majestic's conduct.

[37] Staff requests permanent bans on Majestic to ensure that no further investors are brought in. Staff acknowledges that there was a treasury distribution of $2.1 million, but ultimately decided that it would only hurt the current Majestic shareholders further if it sought a disgorgement of that amount. Staff submits that the management of Majestic is currently Bishop and investor J.L.1, who invested his life savings in the company. Staff argues that it is a mitigating factor that the ownership of Majestic has changed, and that Adams and Kricfalusi are no longer in charge. However, Staff does request an administrative penalty of $200,000 due to the serious nature of the breaches, which led to an illegal distribution of Majestic shares.

[38] As stated above, Staff submits that the predominant portion of the investigation dealt with Majestic, Suncastle and Adams and that $225,000 of the investigation and hearing costs, which is approximately two thirds of the total sought, could be divided amongst those three respondents. Therefore, Staff requests an order that Majestic pay $75,000 for costs incurred by the Commission.

vi. Suncastle

[39] Staff submits that Suncastle was controlled by Adams and Kricfalusi and requests permanent bans on Suncastle to ensure that no further investors may be harmed by similar conduct.

[40] Staff submits that the disgorgement order sought from Suncastle for $1,832,682 is the amount raised by Suncastle from the sale of Majestic shares in the secondary market, as quantified by Paul DeSouza, Staff's senior forensic accountant, and corroborated by Suncastle's financial statements. When asked why the gains on sales of Majestic shares recorded in financial statements for fiscal years 2007 and 2008 amount to $1,592,637, Staff argued that the amount sought to be disgorged is referring to the amount obtained, while the lesser value may factor in acquisition costs for the shares. Staff submits that subsection 127(1) of the Act speaks to disgorgement of amounts obtained, not merely profits realized from non-compliance with the Act.

[41] Staff also submits that an administrative penalty of $200,000 for Suncastle is appropriate.

[42] Again, Staff submits that the predominant portion of the investigation dealt with Majestic, Suncastle and Adams. As a result, Staff requests an order that Suncastle pay $75,000 for costs incurred by the Commission.

vii. CBK

[43] Staff submits that CBK is a trust that held shares of Majestic on behalf of Kricfalusi and Adams. Although the transactions were done in trust for the benefit of Adams and Kricaflusi, Staff submits that CBK still beached subsections 25(1)(a) and 53(1) of the Act. Staff took the position that under the circumstances short five-year bans, an administrative penalty of $10,000 and a costs payment of $5,000 are appropriate.

[44] The transactions in which CBK was involved are already accounted for in Staff's request for disgorgement from Kricfalusi and Adams. Therefore, to avoid duplication, no disgorgement order is sought against CBK.

B. Adams's Submissions

[45] Counsel for Adams submits that appropriate sanctions for Adams would be an administrative penalty of $150,000, disgorgement of $150,000 and a costs order of $50,000. Further, he argues that any ban imposed on Adams's ability to trade securities should be subject to a carve-out exception for personal trading of securities listed on a defined stock exchange in an RRSP account, once all penalties have been paid. Counsel for Adams made no submissions on the other orders requested by Staff.

[46] Adams's counsel argued that the proposed reduced amounts are more appropriate and that Adams does not have the ability to pay fines or costs anywhere near what Staff is requesting. He tendered into evidence Adams's Statutory Declaration, sworn on March 13, 2013, which appends a further declaration sworn July 20, 2011, on the state of Adams's current finances in support of his submission that Adams is unable to pay. Counsel submitted that Adams is currently living on approximately $1,075 per month in disability payments, his assets have depreciated, he no longer holds stocks or bonds and has surrendered his life insurance. Conversely, counsel submits, Adams's liabilities are hefty and have not improved since 2011. In addition, it is argued that Adams is going to have to retain counsel for an inevitably costly fraud trial slated to begin in September 2013. As a whole, counsel for Adams submits that it is unlikely that Adams is going to be able to pay in the foreseeable future. As a result, he argues that it does not assist the Commission to achieve specific or general deterrence by levying sanctions so discordant with an individual's ability to pay that it would be impossible to recoup the amount.

[47] Counsel for Adams relies on *Kasman*, a case in which it was found that manipulative or deceptive trading took place and the Investment Dealers Association ("**IDA**") levied fines that were at odds with what IDA Staff had requested at the sanctions hearing (*Re Kasman* (2009), 32 O.S.C.B. 5729 ("***Kasman***") at paras. 2 and 6). The matter was reviewed by the Commission, which decided that a respondent's personal and financial circumstances are relevant factors to be considered, among other sanctioning factors, to determine the amount of a fine, and accepted that considering ability to pay is consistent with the principle of proportionality (*Kasman, supra* at para. 72). The Commission also stated that, in determining the appropriate fine to achieve specific and general deterrence, all relevant factors must be considered and in *Kasman* the value of trades was relatively minor, over a short period, there was no evidence of harm to any third party and the respondents did not plan the manipulation (*Kasman, supra* at para. 74).

[48] Adams's counsel also relies on *R. v. Topp*, a criminal case in which the accused was convicted of defrauding Canada Customs of $4.7 million (*R. v. Topp*, [2011] S.C.R. 119). In that decision, the Supreme Court of Canada analyzed a section of the *Criminal Code*, R.S.C. 1985, c. C-46 (the "***Criminal Code***"), which provides that no sanctions are to be levied if there is no ability to pay. Counsel for Adams agreed that there was no concurrent provision in Ontario securities law, but argued that the decision should be considered for its discussion of principles, including that a Court can only impose a fine if it is satisfied that the offender has the means to discharge the fine (*R. v. Topp, supra* at paras. 19-20).

[49] In his written submissions, counsel for Adams also argued that Adams will experience shame as a result of any sanctions. He notes that many of the investors knew Adams prior to investing and the decision setting out the breach has been reported in the media.

[50] Counsel also took the position that Adams is at the lower end of the scale with respect to market experience, when considered by comparison to Loman, who has been an ASC registrant and was previously sanctioned by that body, and Bishop, who has been a registrant with the Commission. Further, Adams's counsel submits, Bishop was described by one witness at the Merits Hearing as a financial advisor and admitted to having raised $2.5 million for Majestic. In contrast, counsel submits Adams had significantly less experience, was never a registrant, and there is no evidence he was heavily involved in the capital markets. If not a mitigating factor for Adams, his counsel argues experience is at least an aggravating factor for others, which is not present for Adams.

[51] In advocating for a trading carve-out, Adams's counsel submits that there should not be a distinction drawn between Adams, Bishop and Loman. His position is that the evidence supports that both Loman and Bishop engaged in deceitful conduct as well. With respect to Bishop, counsel directed the Panel to its finding that Bishop made material misrepresentations to induce Majestic investors into purchasing shares, including that Majestic would go public. In relation to Loman, counsel argued that investors R.F. and R.R. both testified that they were told by Loman that Majestic would go public and that the Panel decided that Loman's explanation for receipt of $145,000 was not credible. The latter, counsel argued, places Loman in a similar position to the respondent in *Re Fortuna - St. John* where a carve-out was refused after the respondent took steps to conceal his activities (*Re Fortuna - St. John*, 21 O.S.C.B. 3851 at paras. 130-133). Therefore, counsel for Adams submits that there is no basis for Staff to take the position that Adams is too untrustworthy to allow a carve-out, while not also making that contention for both Loman and Bishop. His submission is that either Adams, Bishop and Loman should have a carve-out, or none of them should. Adams's counsel confirms that Adams does not have RRSP assets, but requests the carve-out for future acquisition, should the requisite penalties be paid.

[52] It is also submitted that ability to pay is a factor to consider with respect to disgorgement. Counsel for Adams relies on *Sulja Sanctions* in support of that proposition (*Re Sulja Bros. Building Supplies Ltd. et al.* (2011), 34 O.S.C.B. 7515 ("***Sulja Sanctions***") at para. 67) and directs the Panel to consider ability to pay as a mitigating factor when determining disgorgement (*Limelight Sanctions, supra* at paras. 21 and 52).

[53] In summation, Adams's counsel states that the overarching goal of the Commission is to create a proportionate sentence that takes into account general and specific deterrence. Counsel submits that it does not achieve general or specific deterrence to create an exorbitant disgorgement order, administrative penalty or costs award that will never be able to be paid off.

C. Bishop's Submissions

[54] Bishop began his submissions by questioning Adams's need for a carve-out, as it implies Adams would have sufficient funds to want to engage in the capital markets in the future. Bishop also took issue with the contention that Adams's experience in the capital markets is lesser than his own or Loman's experience. Bishop argues that Adams advised, assisted or was the

shareholder of many corporations over the years and has elaborate knowledge of the markets, in particular with respect to small start-up companies, such as Majestic.

[55] Bishop made various references to his reliance on Majestic and Suncastle's lawyer. Bishop also claimed that he asked a venture capitalist to assess Majestic, and was told that the company was worth $200 million. No evidence was tendered in support of these submissions. Bishop also included in his written submissions that he pursued his contractual obligations to Majestic and Suncastle in the belief that the business was legitimate.

[56] Bishop submits that he was the whistle blower who approached the police and the Commission with the subject matter of this proceeding. He further submitted that he volunteered to meet with Staff's investigator and a number of detectives and readily acknowledged his role. Bishop also submitted that he never sold any of his own Majestic shares, whereas Adams and Kricfalusi benefitted from the sales of their shares to investors.

[57] Bishop conveyed his remorse stating "I want you to understand how regretful I feel every day. This should have never happened." (Bishop – Hearing Transcript of March 15, 2013 at p.116). Bishop submits that he was paid far less that the contracts awarded him, lost friends and will never be in the business again.

[58] On the matter of settlement, Bishop admits he declined to settle because he would be excluded from the proceeding. However, Bishop notes that he told the Commission what he did, how it was done and who directed him. Further, Bishop delivered the documents that Staff could rely upon. Bishop also states that he believes the Commission could not sanction the Respondents enough and that he is not seeking to lessen any penalties. Specifically, Bishop stated that he did not require an RRSP carve-out because he would never have enough money to put into an RRSP.

D. Kricfalusi's Submissions

[59] Kricfalusi sought a reduction of any penalty ordered against her. Kricfalusi submitted that she did not have any money, was a single mother with no support and had two mortgages at a time when she had no money coming in. Kricfalusi also submitted that she was diagnosed with fibromyalgia, which caused her chronic pain and made her unable to work. Kricfalusi did not testify or tender any documentary evidence that would support her submissions.

[60] Kricfalusi further stated that she had followed directions and relied on the lawyer. She expressed her remorse in stating "I am very sad and regretful that all this has happened, and would not have been involved had I known this was not allowed" (Kricfalusi – Hearing Transcript of March 15, 2013 at p.124).

E. Loman's Submissions

[61] Counsel for Loman submits that the sanctions sought by Staff are excessive and disproportionate. He suggests that a cease trade order, denial of exemption and director/officer ban of three to five years, as well as an administrative penalty of $20,000, costs of $10,000 and no disgorgement order, would be more appropriate.

[62] Loman's counsel submits that the Panel acknowledged many of the Alberta investors had an acquaintance-like relationship with Loman and that he was sharing information with them. He took the position that Loman is in a different situation than the people running Majestic, namely Bishop, Adams and Kricfalusi and, therefore, considering proportionality, sanctions imposed on Loman should be less than others in this matter.

[63] Loman's counsel submits that Loman should be granted a carve-out to trade in any RRSP, Tax Free Savings Account ("**TFSA**") or Registered Education Savings Plan ("**RESP**") account, once all funds ordered to be paid have been paid. Further, Loman's counsel submits that Loman should be granted a carve-out to act as a director or officer of an issuer that:

a) is wholly owned by one or more of himself or members of his immediate family;

b) does not issue or propose to issue securities or exchange contracts to the public; and

c) does not, directly or indirectly, trade in or distribute, advise in respect of trades or distributions of, or promote the purchase or sale of, securities or exchange contracts of any issuer.

[64] Loman's counsel notes that Loman invested $30,000 into Suncastle and between himself and Essen Inc. a further $100,000 into Majestic. He also submits that despite Staff's submissions that Loman was paid $228,000, the evidence demonstrates a payment of $145,250 received by Essen Inc. and a payment of $60,000 made to Loman from Majestic, which totals $205,250. Loman's counsel argues that no disgorgement order should be made against Loman.

[65] Loman's counsel compares Loman to others. He notes that Staff acknowledged Bishop received less money from Majestic than was called for in his employment agreement and sought no disgorgement against him. Further, he submits that Loman, like Bishop, did not sell any of his own shares. He also submits that investors, such as H.E. and L.N. also spoke to others about Majestic and assisted them in investing, yet Staff made no allegations against them and their conduct will not be sanctioned.

[66] Counsel for Loman submits that $20,000 is a fair and proportionate administrative penalty.

[67] With respect to costs sought, Loman's counsel submits that the approach taken by Staff, which does not include certain costs in the Bill of Costs, does not allow the Respondents to test these other costs and such an approach should not be permitted. He argues that the costs system is not a "fair" system in the sense that if Staff is successful it is entitled to costs, but, if the respondent is successful, the Act and the *Rules of Procedure* do not provide for costs awards to the respondent. It is submitted that as a general rule, Staff should not be entitled to recovery of costs that approaches full recovery, as a result of the system being "unfair". Counsel submits that an approach which limits Staff's recovery to two thirds of its Bill of Costs could be considered. He submits that taking into account the proposed system and Loman's conduct in comparison to others, an appropriate costs award would be $10,000.

F. Staff's Reply Submissions

[68] In response to Adams's submissions, Staff argues that ability to pay is one relevant sanctioning factor, but not a determinative one (*Sabourin Sanctions, supra* at para. 60). Staff submits that counsel for Adams requests lower monetary sanctions and costs, but does not provide reasons for the specific figures proposed. Staff also argues that the amounts suggested by Adams's counsel are too low and therefore do not send the appropriate deterrent message, especially given the seriousness of Adams's conduct. On the matter of whether the Panel should permit a carve-out for Adams to trade, Staff submits that it is not appropriate given the aggravating circumstances of his deceitful conduct, and states that there is a precedent in such cases for not providing a carve-out. Further, Staff submits that in the future a respondent may make an application to vary an order if he or she seeks the privilege of trading in securities in Ontario.

[69] Also, with respect to Adams's reliance on criminal case law and the language of the *Criminal Code*, Staff submits that there is no equivalent language in the Act which, if present, would suggest that the Commission ought not impose a monetary penalty if it is not satisfied that the offender is able to pay. Further, Staff submits that criminal case law on the matter is not applicable because the Commission does not impose fines, it imposes administrative penalties, which can then be filed in the Superior Court and enforced as a civil judgment. Staff relies on *R. v. Castro* cited in *Sulja Sanctions*, which finds that a jail sentence and a restitution order can be made together in the criminal setting and that "where the circumstances of the offence are particularly egregious, such as where a breach of trust is involved, a restitution order may be made even where there does not appear to be any likelihood of repayment" (*Sulja Sanctions*, *supra* at para. 23 citing *R. v. Castro* (2010), 270 O.A.C. 140 at paras. 28 and 35). Staff argues that the administrative penalty in the Act is more akin to a restitution order than it is to a criminal fine.

[70] Lastly, the argument that Adams needs funds to pay for his upcoming criminal fraud trial, Staff submits, is a not factor to be considered.

G. Further Submissions

[71] On March 15, 2013, at the Sanctions and Costs Hearing, Bishop questioned the truthfulness of Adams's Statutory Declaration, sworn on March 13, 2013 on inability to pay, specifically stating that Adams was currently the shareholder of a company. Counsel for Adams objected to the submission on the basis that there was no evidentiary foundation for Bishop's claims. Bishop undertook to obtain the relevant documentation, Staff requested time to further investigate the claim and counsel for Adams submitted that if Staff and Bishop wished to cross-examine Adams he was entitled to see the documents before they were put to Adams. On March 15, 2013, the Panel, in consultation with the parties, determined that the Sanctions and Costs Hearing would be adjourned for the parties to gather necessary documentation and advise if a further appearance was necessary to cross-examine Adams. Staff subsequently filed two Affidavits of Jeff Thomson, sworn on April 3, 2013 and May 2, 2013, containing the documents obtained since the adjournment.

[72] On May 2, 2013, Staff, counsel for Adams and counsel for Loman appeared before the Panel and Bishop sent correspondence advising that he was no longer able to attend due to a family emergency. Staff submitted that the documents tendered support that Adams did not own the shares Bishop claimed he did on March 13, 2013 and that, through Thomson's investigation, the transfer agent confirmed that Adams's Statutory Declaration, sworn on March 13, 2013, is accurate. Further, there is no evidence that displaces the declaration. As a result, Staff did not make a request to cross-examine Adams. Counsel for Loman took no position in the issue.

[73] The Panel advised the parties that it received correspondence from Kricfalusi, who indicated she had no submissions, and Bishop, who stated he "hoped to have the opportunity to cross-examine Mr. Adams on his affidavit and subsequent responses". In the circumstances, taking into account that Bishop is an unrepresented respondent, who was unable to attend due to reasonable circumstances, and acknowledging that he should have the opportunity to make submissions on the issue, the Panel decided that another hearing date was not necessary, but that the parties would have until May 10, 2013 to serve and file any written submissions or evidence responding to the affidavits of Jeff Thomson, sworn April 3 and May 2, 2013, after which the Panel would deliberate on its sanctions decision.

[74] On May 10, 2013, Bishop filed written submissions on the issue. In his written submissions, Bishop acknowledged that the evidence may satisfy the contention that Adams was truthful on disclosure of his shareholdings. The remainder of Bishop's submissions did not assist the Panel.

V. THE LAW ON SANCTIONS

[75] Pursuant to section 1.1 of the Act, the Commission's mandate is to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets.

[76] The Commission must ensure that the sanctions imposed are proportionate to the circumstances of the case and conduct of each respondent. 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 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 sanctions or voluntary payment when considering 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 ("***Belteco***") at paras. 23-26; *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("***MCJC Holdings***") at paras. 18-19 and 26).

[77] Deterrence is an important factor that the Commission may consider when determining appropriate sanctions. In *Cartaway*, the Supreme Court of Canada stated that: "…it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60).

[78] The Commission has held that an administrative penalty "may not act as a sufficient deterrent if its magnitude is inadequate compared with the benefit obtained by non-compliance" *(Re Rowan* (2009), 33 O.S.C.B. 91 ("***Rowan***") at para. 74). The panel in *Limelight Sanctions, supra* at para. 67, stated:

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

[79] There is no formula for determining an administrative penalty. Factors to be considered in determining an appropriate administrative penalty include: the scope and seriousness of the misconduct; whether there were multiple and/or repeated breaches of the Act; whether the respondent realized a profit as a result of the misconduct; the amount of money raised from investors; and the level of administrative penalties imposed in other cases (*Rowan, supra* at para. 67; and *Limelight Sanctions, supra* at paras. 71 and 78).

[80] Subsection 127(1)10 of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained" as a result of the non-compliance. When determining the appropriate disgorgement orders, we are guided by a non-exhaustive list of factors set out in *Limelight Sanctions* at para. 52, including:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

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

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

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

VI. SPECIFIC SANCTIONING FACTORS

[81] In determining appropriate sanctions, the Commission is guided by the factors set out in *Belteco* and *M.C.J.C. Holdings*. We have considered those factors summarized in the following paragraphs to be specifically applicable in this matter.

A. Seriousness of Misconduct and Breaches of the Act

[82] All of the Respondents participated in serious contraventions of the Act by engaging in unregistered trading contrary to subsection 25(1)(a) of the Act and the distribution of securities without a prospectus contrary to subsection 53(1) of the Act. Registration is a cornerstone of securities law which serves as a gate-keeping function to ensure only properly qualified individuals are permitted to trade with, or on behalf of, the public. The prospectus fulfills an important disclosure requirement to ensure that investors are able to make informed decisions. These violations of the Act were prolonged, from 2005 to 2008, and widespread, affecting 88 treasury shareholders and 98 others who purchased shares through secondary market sales (Merits Decision, *supra* at paras. 41 and 46).

[83] The seriousness of the conduct is elevated for Majestic, Adams and Bishop, who made prohibited representations with respect to future listing of Majestic shares on a stock exchange with the intention of effecting a trade in a security, contrary to subsection 38(3) of the Act (Merits Decision, *supra* at para. 206). The seriousness of Adams's conduct is aggravated further by the finding that he made deceptive representations to induce an investor to purchase Majestic securities contrary to the public interest (Merits Decision, *supra* at paras. 191 and 193). The deceitful course of conduct of these Respondents is an aggravating factor.

B. The Respondents' Experience in the Marketplace

[84] There is no record of Adams, Kricfalusi, Majestic, Suncastle or CBK having been registered with the Commission in any capacity (Merits Decision, *supra* at paras. 37 and 147).

[85] It is not disputed that Bishop was formerly registered with the Commission for at least 17 years as a salesperson under the categories of mutual fund dealer and limited market dealer at various times between 1982 and 1999. Further, Loman was an ASC registrant, as a mutual fund salesperson from 2003 to 2005. As former registrants with Canadian securities regulators, both Bishop and Loman ought to have known the registration requirements of Ontario securities law, yet they still traded in or acted in furtherance of trades of securities to the public, which caused serious harm to investors. Loman was also previously subject to a three-year trading ban imposed pursuant to the terms of a settlement agreement with the ASC.

[86] Counsel for Adams submitted that Adams's lack of experience in the marketplace, by comparison to Bishop and Loman, should be taken into account in imposing sanctions. Bishop took the position that Adams had experience and elaborate knowledge of the markets, in particular with respect to small start-up companies, such as Majestic. Some of the evidence in Thomson's affidavits, sworn on April 3, 2013 and May 2, 2013, support Bishop's position in part. The manner in which Adams structured his shareholdings, including his trust relationship with CBK, the nature of Adams's deceitful conduct in furtherance of selling Majestic shares and the manner in which he disposed of his shares, through loan and conversion agreements (the "**L&C Agreements**") and other trust arrangements, support a finding that Adams was not an inexperienced market player. We do not find Adams's submissions on this point to be persuasive.

[87] Adams, Bishop and Loman's market experience is an aggravating factor for each, which is not present for the other Respondents.

C. Level of Activity in the Marketplace

[88] We found that Majestic sold shares from treasury to 88 shareholders for consideration of approximately $2.1 million (Merits Decision, *supra* at para. 145). There was also evidence that Suncastle was paid consideration of $1,832,682 for its sale of Majestic shares (Merits Exhibit V5). Furthermore, Majestic, its predecessor company, Adams and Kricfalusi also executed forty-nine L&C Agreements, which were found to constitute securities, in furtherance of selling Majestic shares (Merits Decision, *supra* at para. 145). This is a substantial sum of money obtained through solicitation of investors over at least a two year period.

D. Respondents' Recognition of the Seriousness of their Conduct and Remorse

[89] Bishop repeatedly acknowledged his role and conduct in breach of the Act.

[90] Further, Bishop and Kricfalusi expressed remorse for their conduct. As stated above, Bishop conveyed his remorse stating "I want you to understand how regretful I feel every day. This should have never happened." (Bishop – Hearing Transcript of March 15, 2013 at p.116). Kricfalusi expressed her remorse stating "I am very sad and regretful that all this has happened, and would not have been involved had I known this was not allowed" (Kricfalusi – Hearing Transcript of March 15, 2013 at p.124). We accept their submissions in this respect to be genuine and consider this to be a mitigating factor for Bishop and Kricfalusi.

E. Specific and General Deterrence

[91] Given the seriousness of the conduct, it is important that the Respondents and like-minded individuals engaging in such conduct, particularly when it is deceitful, should be deterred from doing so in the future by imposing appropriate sanctions, which reflect the harm done to investors. We find that specific deterrence is necessary for all the Respondents in this case.

F. Mitigating Factors

[92] We found no mitigating factors to be applicable for Suncastle.

[93] As stated above, we accept Bishop and Kricfalusi's expressed remorse to be genuine and consider this to be a mitigating factor for each. Despite not settling, Bishop also recognized the seriousness of his conduct by acknowledging his role and not disputing the sanctions sought to be imposed upon him. Furthermore, Bishop co-operated with Staff and investigators, provided documentary evidence and participated in voluntary interviews. These are mitigating factors in favour of Bishop.

[94] We accept the submissions that Loman's position as an investor in Majestic is a mitigating factor for him. However, we do not agree that the nature of Loman's relationships with the Alberta investors is a mitigating factor in his favour. The relationships do not minimize his responsibility for acting in contravention of the Act.

[95] We find that Adams's Affidavit, provided as evidence of his inability to pay, is not conclusive. In reviewing the schedules to Adams's Affidavit, we considered that aside from one monthly payment statement from the Ministry of Community and Social Services there was no objective third party corroboration of his assets or liabilities or income, such as, for example, an income tax statement. We received no evidence as to what happened to the money personally received by Adams in this matter. As a result, ability to pay is a mitigating factor, but in this case it is not a strong one.

[96] Without detracting from the seriousness of breaches of the Act by CBK, we also acknowledge that CBK was acting in its capacity as trustee on direction of and for the benefit of Adams and Kricfalusi, which we find to be a mitigating factor for CBK.

[97] We also consider Majestic's change in management after the Material Time to be a mitigating factor when considering sanctions against Majestic. The managing directors and officers who took advantage of their positions during the Material Time are no longer with Majestic (other than Bishop) and current management includes investors who lost their money.

G. Size of Profit Gained or Loss Avoided from Illegal Conduct

[98] We found that Majestic sold shares from treasury for consideration of approximately $2.1 million (Merits Decision, *supra* at para. 145). Furthermore, Majestic and its predecessor raised funds from Majestic investors through L&C Agreements totaling $292,400 (Merits Exhibit V25, Tabs 5, 13, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29 and 31).

[99] There was also evidence that Suncastle received consideration of $1,832,682 for its sale of Majestic shares (Merits Exhibit V5).

[100] We accept that CBK did not profit or avoid loss from the transfer of Majestic shares for the benefit of Adams and Kricfalusi.

[101] The evidence also supports a finding that Adams received $516,000 pursuant to transfers of Majestic shares and L&C Agreements, which he executed in furtherance of reselling Majestic shares (Merits Exhibit V25, Tabs 1-12, 13-18, 30, 32-36, 38-40 and 46). We note that an amount of $5,000 for investor B.R. was double-counted in Staff's submissions at Schedules "B" and "D" and we have deducted that amount to arrive at the total of $516,000 above.

[102] We were not provided with evidence of commissions paid to Bishop.

[103] We had evidence that Krifalusi received a total of $60,000 from investors pursuant to L&C Agreements executed by her for the secondary sales of Majestic shares (Merits Exhibit U25, Tabs 41-43, 47 and 49).

[104] We found that Loman was paid commissions of $145,250 in respect of sales of Majestic shares to Alberta investors (Merits Decision, *supra* at para. 160).

[105] None of the Respondents should be allowed to profit from amounts obtained by them as a result of their activities in breach of Ontario securities law.

H. Respondent's Ability to Pay

[106] Ability to pay is one factor to consider in determining the appropriate sanctions, but it is not a determinative factor. We are not bound by decisions in criminal matters, nor does the Act refer to a means test in considering the appropriate monetary sanctions or costs. Rather, our mandate is to order sanctions which are protective and preventative, when it is in the public interest to do so.

[107] We have considered the evidence of Adams's financial position and view this as a weak mitigating factor. As stated above, we find that Adams's Affidavit on the issue is not conclusive. The schedules to his affidavit, do not include sufficient reliable corroboration of his assets or liabilities or income. Again, no evidence was tendered as to what happened to the money personally received by Adams in this matter. We are not persuaded by the argument that future legal fees for a fraud trial is an appropriate factor to consider.

[108] Kricfalusi did not provide the Panel with evidence in support of her submissions on inability to pay. In the absence of such evidence, we are unable to consider this as a factor in determining the appropriate sanctions for Kricfalusi.

I. Effect of Sanctions on Livelihood of Respondents

[109] While Bishop and Loman were former registrants, with the Commission and the ASC, respectively, there were no submissions from either of them that they wished to pursue a career as a registrant going forward.

J. Shame that Sanctions Would Reasonably Cause to the Respondents

[110] Bishop and Adams both made submissions on the shame experienced by them as a result of these proceedings.

[111] Bishop submits that he lost friends and will never be in the business again. Counsel for Adams submits that Adams will experience shame as a result of any sanctions. He notes that many of the investors knew Adams prior to investing and the decision setting out the breach has been reported in the media. We have considered these factors for Bishop and Adams, but do not find them to be determinative.

VII. APPROPRIATE SANCTIONS IN THIS MATTER

[112] In determining the appropriate sanctions, we have remained cognizant of the role and conduct of each of the Respondents. We have also taken into account the Merits Decision findings of contraventions of the Act, which differ between certain of the Respondents, the submissions of the parties, the evidence before us and the sanctioning factors considered above.

A. Trading, Acquisition and Exemption Prohibitions

[113] We agree that the conduct of the Respondents warrants the imposition of certain trading, acquisition and exemption prohibitions that are commensurate with the conduct of each. We also agree that participation in the capital markets is a privilege and respondents who wish to re-enter the market should take responsibility for their conduct and recognize the seriousness of their improprieties (*Erikson*, *supra*). We are mindful that the Commission has ordered permanent cease trade bans, acquisition bans and exemption application bans in circumstances where respondents were found to have engaged in unregistered trading, in the absence of findings of fraud (*Maple Leaf*, *supra* at para. 8 and 55). The Commission in *Sabourin Sanctions* ordered similar sanctions in a matter where securities were sold to investors through salespersons who were found to have contravened sections 25 and 53 of the Act (*Sabourin Sanctions*, *supra* at para. 7).

[114] Majestic and Suncastle sold and/or resold Majestic shares to investors, without being registered to do so, over a prolonged period of time and resulting in a distribution of securities, contrary to subsections 25(1)(a) and 53(1) of the Act. Specifically, Majestic received consideration of approximately $2.1 million (Merits Decision, *supra* at para. 145) and Suncastle received consideration of $1,832,682 for Majestic shares (Merits Exhibit V5). Further, Majestic made prohibited representations, through Bishop, to induce Majestic investors into purchasing shares, including that Majestic would go public (Merits Decision, *supra* at para. 223). We are not confident that either Suncastle or Majestic should be trusted to participate in the capital markets and we find that the public interest is served by ordering that neither Majestic nor Suncastle is permitted to trade in or acquire securities and that exemptions contained in Ontario securities law do not apply to Majestic and Suncastle on a permanent basis.

[115] We accept Staff's submissions and proposed trading, acquisition and exemption application bans for CBK. As noted above, CBK acted in furtherance of trades by transferring Majestic shares for the benefit of Adams and Kricfalusi (Merits Decision, *supra* at paras. 149-150). We acknowledge that CBK was acting in its capacity as trustee on direction of Adams and Kricfalusi and find that it is in the public interest to order that CBK cease trading in securities, be prohibited from acquiring securities and that exemptions contained in Ontario securities law not apply to CBK for a period of 5 years.

[116] We find that Adams was a principal actor, and at various points an officer and director, in Majestic and Suncastle's operations and the beneficiary of the majority of share sales in the secondary market. Adams did, directly and indirectly through CBK, sell his own Majestic shares to investors, a number of whom were low-income friends of investor D.B., who did not qualify as accredited investors (Merits Decision, *supra* at paras. 57, 145 and 149-150). Taking into account his breaches of subsections 25(1)(a), 38(3) and 53(1) of the Act, actions contrary to the

public interest by making deceptive representations to an investor in order to induce a sale of shares, and considering the role Adams had as director and officer of both Majestic and Suncastle in terms of authorizing, permitting and/or acquiescing in breaches by those companies within the meaning of section 129.2 of the Act, we find that 20-year trading, acquisition and exemption application bans are appropriate. While there was no allegation or finding of fraud in this matter, we nevertheless have no confidence that Adams would not re-engage in similar conduct in the future and will not permit a carve-out for personal trading under these circumstances.

[117] Bishop was also a principal actor, an officer and director of Majestic and was found to have breached subsections 25(1)(a) and 53(1) of the Act and made representations as to the future listing of Majestic shares on a stock exchange for the purpose of effecting trades in Majestic shares, contrary to subsection 38(3) of the Act and contrary to the public interest (Merits Decision, *supra* at para. 206). Bishop was also deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act for his role as a director and officer of Majestic (Merits Decision, *supra* at para. 223). Unlike Adams, Bishop did not sell any of his own Majestic shares and did not authorize, permit and/or acquiesce in conduct of other corporate vehicles or direct trust arrangements in furtherance of trading Majestic shares. Bishop was clearly remorseful for the consequences of his actions and co-operated with Staff throughout the proceeding. Nevertheless, Bishop was a former registrant with the Commission and should have been cognizant of the registration requirements. We find that Bishop should not be permitted to trade in or acquire securities and that exemptions contained in Ontario securities law should not apply to Bishop for a period of 15 years.

[118] Kricfalusi was an officer and director of Suncastle, she was found to have breached subsections 25(1)(a) and 53(1) of the Act, acted contrary to the public interest and was the beneficiary of certain sales of Majestic shares in the secondary market (Merits Decision, *supra* at paras. 149-150 and 223). Kricfalusi was also deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act for her role as a director and officer of Suncastle (Merits Decision, *supra* at para. 223). Kricfalusi did express remorse for her involvement and, unlike Adams and Bishop, there was no evidence that she made any prohibited representations to investors. We find that 8-year trading, acquisition and exemption bans are appropriate and should send a deterrent message to Kricfalusi.

[119] Loman was a Majestic securities salesperson who was found to have breached subsections 25(1)(a) and 53(1) of the Act and acted contrary to the public interest for his acts in furtherance of trading Majestic shares (Merits Decision, *supra* at paras. 161-162 and 223). Despite being an investor himself, Loman had direct contact with the Alberta investors and received commissions on sales of Majestic shares to a number of those investors (Merits Decision, *supra* at para. 160). While Loman was not involved in a management capacity with Majestic or Suncastle like the other individual Respondents, he was a former registrant with the ASC, has been subject to bans in the past and should be held to a higher standard because of his experience. We find it appropriate for Loman to be ordered to cease trading in securities, be prohibited from acquiring securities and that exemptions contained in Ontario securities law not apply to Loman for a period of 10 years.

[120] We have disagreed with the length of Staff's proposed trading, acquisition and exemption sanctions for Kricfalusi and Loman. In *Limelight Sanctions* the salesman, Daniels, received 10-year prohibitions with respect to trading and removal of exemptions, subject to a carve-out for RRSPs (*Limelight Sanctions*, *supra* at para. 42). We find that more proportionate prohibitions on trading, acquisition and exemption in the case of these respondents would be orders for 10 years in the case of Loman and 8 years in the case of Kricfalusi.

[121] In *Sabourin Sanctions*, the Commission found salespersons to have contravened sections 25 and 53 of the Act (*Sabourin Sanctions*, *supra* at para. 7). In that decision, the panel decided the salespersons should permanently cease trading securities, be prohibited from acquiring securities and that there should be a permanent removal of exemptions against each of them, subject to a carve-out for RRSPs with respect to trading and acquiring securities (*Sabourin Sanctions*, *supra* at para. 7).

[122] We find that none of the Respondents should be granted any exception for personal trading because they cannot be trusted to participate in Ontario's capital markets even in a limited capacity.

[123] We consider it appropriate in the circumstances to impose 20, 15, 10 and 8-year prohibitions on the individual Respondent's ability to trade securities, acquire securities or benefit from exemptions contained in Ontario securities law. Bishop and Kricfalusi have expressed, and the panel has accepted, their remorse for conduct in breach of the Act and contrary to the public interest. Bishop has acknowledged the seriousness of his breaches throughout the proceeding. We also find that Loman's position as an investor is a mitigating factor for him. For these reasons, we consider it appropriate to impose the prohibitions on the Respondents' abilities to trade securities, acquire securities or benefit from exemption under Ontario securities law.

B. Other Market Prohibitions

[124] Given their misconduct, we agree that none of the Individual Respondents should be immediately entitled to become or act as registrants, investment fund managers or as promoters. As stated above, we have no confidence in Adams, having found that he engaged in deceitful conduct to induce the sale of Majestic shares. Bishop was a former registrant with the Commission, who also made prohibited representations to investors. Lastly, Loman was a former registrant with the ASC, who had been previously sanctioned pursuant to a settlement agreement with the ASC. To protect the public, we find that it is appropriate to impose market prohibitions on Adams for 20 years, Bishop for 15 years, Loman for 10 years and Kricfalusi for 8 years so that they do not become or act as registrants, investment fund managers or as promoters for the respective amounts of time.

C. Director and Officer Bans

[125] We note that permanent director and officer bans, coupled with permanent trading, acquisition and exemption prohibitions, were found to be appropriate in *Ochnik.* In that matter, a respondent had violated sections 25 and 53 and engaged in misleading and deceptive behaviour

(*Ochnik*, *supra* at paras. 92, 108-113). Similar sanctions were ordered against the respondent who breached section 25 in *Maple Leaf* (*Maple Leaf, supra* at paras. 8 and 55).

[126] In *Sabourin Sanctions*, the Commission ordered the salespersons and directing mind to resign and be permanently banned from becoming or acting as directors or officers of an issuer, in which approximately $33.9 million was invested in an investment scheme that was found to be a sham (*Sabourin Sanctions, supra* at para. 64). In *Limelight Sanctions*, a matter in which $2.75 million was raised from investors through unregistered trading and an illegal distribution, the directing minds were also permanently banned, and the salespersons were banned for a period of 10 years, from becoming or acting as directors or officers of an issuer (*Limelight Sanctions, supra* at para. 87(d) and (e)).

[127] The Individual Respondents each engaged in conduct for the purpose of trading or acting in furtherance of unregistered trading in securities. Adams, Bishop and Kricfalusi acted as officers and/or directors of Majestic and/or Suncastle during the Material Time and authorized, permitted or acquiesced in breaches of the Act by those companies (Merits Decision, *supra* at para. 223). Loman received funds through his company, Essen Inc., as a vehicle for payment of commissions due to him from sales of Majestic shares (Merits Decision, *supra* at paras. 15, 83, 93, 160).

[128] The Individual Respondents' use of their positions to further conduct contrary to the Act and contrary to the public interest guides us in our decision that they should resign all positions as directors or officers of an issuer, registrant or investment fund manager. Commensurate with their involvement, we find that Adams should be prohibited for a period of 20 years, Bishop for 15 years, Loman for 10 years and Kricfalusi for 8 years from becoming or acting as officers or directors of any issuer, registrant or investment fund manager.

[129] Having heard and considered the submissions of Loman's counsel, we are prepared to allow that Loman be granted a carve-out to act as a director or officer of an issuer that:

a) is wholly owned by one or more of himself or members of his immediate family;

b) does not issue or propose to issue securities or exchange contracts to the public; and

c) does not, directly or indirectly, trade in or distribute, advise in respect of trades or distributions of, or promote the purchase or sale of, securities or exchange contracts of any issuer.

[130] On the other hand, Bishop made no submissions in support of a carve-out to allow him to continue acting in his current role as a director and officer of Majestic. If Bishop wishes to seek such a carve-out, he may apply for an order varying this decision pursuant to section 144 of the Act.

[131] In our view, the orders for resignation and imposition of varying director and officer bans requested by Staff will ensure that the Individual Respondents will not be placed in a position of control or trust with respect to issuers, registrants or investment fund managers in the near future. These orders serve to ensure general and specific deterrence for the Individual Respondents and like-minded individuals.

D. Disgorgement

[132] We are guided by the non-exhaustive list of factors set out in *Limelight Sanctions* in determining appropriate disgorgement orders (*Limelight Sanctions, supra* at para. 52).

[133] Majestic sold shares from treasury to 88 shareholders for consideration of approximately $2.1 million (Merits Decision, *supra* at para. 145). Majestic and its predecessor also benefitted from a number of L&C Agreements totaling $292,400. There is no question that investors were seriously harmed by Majestic's non-compliance with the Act. However, considering Majestic's change in management, and in an effort to avoid causing more harm to Majestic investors, we agree that no disgorgement order should be made against Majestic. Nor will a disgorgement order be made against CBK, who did not obtain amounts as a result of non-compliance with Ontario securities law.

[134] We accept, on a balance of probabilities, that the evidence shows that Suncastle obtained consideration of $1,832,682 for its sale of Majestic shares (Merits Exhibit V5). Suncastle's breaches of subsection 25(1)(a) and 53(1) the Act caused serious harm to investors. Therefore, Suncastle should disgorge the amount obtained as a result of non-compliance with Ontario securities law. We find the value of $1,832,682 to be reasonably ascertainable based on the analysis of Suncastle's financial records and the testimony of Staff's forensic accountant, Paul DeSouza. We do not think it likely that the individuals who suffered losses will be able to obtain redress.

[135] We find that Adams obtained $516,000 pursuant to transfers of Majestic shares and L&C Agreements he executed in furtherance of trading Majestic shares (Merits Exhibit V25, Tabs 1-12, 13-18, 30, 32-36, 38-40 and 46). Staff also tendered evidence that Adams received $480,000 from investors for the sale of Suncastle shares (Merits Exhibit V25, Tabs 44-45 and 48; Merits Exhibit W1). Staff's Statement of Allegations, filed October 20, 2010, specifically alleged that the Respondents, including Adams, "sold **Majestic shares** contrary to the registration and prospectus requirements of the [Act]" [emphasis added] (para. 9) and made no such allegations with respect to sales of Suncastle shares. Further, our findings in the Merits Decision clearly state that the Respondents "traded in **Majestic securities** and/or engaged in acts in furtherance of trades in **Majestic securities** without having been registered under the Act to do so […]" [emphasis added] (Merits Decision, *supra* at para. 223).

[136] Absent allegations and findings of non-compliance with Ontario Securities law with respect to the sales of Suncastle shares, we are not prepared to order disgorgement of the $480,000 requested by Staff. This should not detract from the seriousness of Adams's misconduct. His breaches of the registration and prospectus requirements of the Act, coupled with a finding that he made prohibited representations with respect to the future listing of Majestic shares on a stock exchange (Merits Decision, *supra* at para. 223) caused substantial harm to investors. Given the precarious financial situation in which Adams currently finds himself, according to Adams's Affidavit, it is unlikely that those who suffered losses will be able to obtain redress. As stated at paragraph 101 above, the evidence supports that Adams received $516,000 as a result of his non-compliance with the Act and we find the amount of $516,000 to be reasonably ascertainable. A disgorgement order of $516,000 should send a deterrent message to Adams and like-minded individuals.

[137] While Bishop's commission agreement entitled him to an annual salary of $75,000 for his role as senior management, a monthly vehicle allowance of $800 and commissions in the form of shares and cash, we were not directed to any evidence that confirms that the approximately $56,000 paid to him by Majestic and $31,000 paid to him by Suncastle during the Material Time were paid as commissions for sales of Majestic shares (Merits Exhibit U15). We note that Bishop admitted to having raised $2.5 million from sales of Majestic shares. However, absent the information which would confirm amounts obtained by him in the course of his non-compliance, we are not prepared to make a disgorgement order against Bishop.

[138] We agree that Kricfalusi obtained an amount of $60,000 from investors pursuant to L&C Agreements executed by her for the secondary sales of Majestic shares (Merits Exhibit U25, Tabs 41-43, 47 and 49). She too engaged in breaches of the registration and prospectus requirements of the Act and authorized, permitted or acquiesced in the commission of the violations of the Act by Suncastle (Merits Decision, *supra* at para. 223), which caused serious harm to investors. From Kricfalusi's submissions we understand that those who suffered losses are unlikely to be able to obtain redress. We find that the amount of $60,000 obtained by Kricfalusi is reasonably ascertainable and that ordering her to disgorge that amount would fulfill goals of specific and general deterrence.

[139] Loman, through his company, obtained commissions, which were directly related to his non-compliance with sections 25 and 53 of the Act. Specifically, we found that Loman received $145,250 as commissions (Merits Decision, *supra* at para. 160). We made no further findings with respect to amounts Loman may have received. Loman admitted to having received $145,250, through Essen Inc. That payment was confirmed through financial records and the purpose corroborated by the "Kevin Loman transactions" document (Merits Exhibit U8). We did not find Loman's explanation for receipt of those funds to be credible. Loman's explanation was unsupported by any service agreement and we did not accept his professed ignorance of an invoice in respect of his own work for a relatively large fee (Merits Decision, *supra* at para. 160). We find that the amount of $145,250 obtained as a result of Loman's non-compliance with Ontario securities law is reasonably ascertainable. We are not confident that the individuals who suffered losses are likely to be able to obtain redress and find that a disgorgement order of $145,250 against Loman should serve as an appropriate deterrent message.

[140] In *Sabourin Sanctions*, the panel ordered joint and several disgorgement of the $33.9 million obtained from investors less $6 million that appeared to have been returned to investors (*Sabourin Sanctions*, *supra* at paras. 70 and 93(g)). The panel in that matter found that joint and several liability of Sabourin and the corporate respondents was appropriate because as the directing and controlling mind of the companies it would impossible to treat them differently (*Sabourin Sanctions*, *supra* at para. 70). Staff suggested in oral argument that joint and several liability could be ordered in this matter for Adams, but did not provide sufficient justification for their proposition. Therefore, we will not be making such an order in this case.

[141] The conduct of the Respondents, particularly the deceitful behaviour, was serious and resulted in substantial harm to investors. As stated above, we find it unlikely that the Majestic investors who suffered losses will be able to obtain redress. Given the reasonably ascertainable value of funds personally obtained by the Respondents, we find that they shall individually disgorge the amounts evidently obtained from sales and resales of Majestic securities.

E. Administrative Penalties

[142] We are guided by the factors noted above to be considered in determining an appropriate administrative penalty (*Rowan*, *supra* at para. 67; and *Limelight Sanctions, supra* at paras. 71 and 78).

[143] We find that orders for administrative penalties against Majestic and Suncastle in the amount of $200,000 each are appropriate in the circumstances. Each committed multiple and repeated violations of the Act, which caused serious harm to Majestic investors. In *Limelight Sanctions*, the Commission imposed administrative penalties of $200,000 against each of the principals for repeated violations of the Act, including unregistered trading (*Limelight Sanctions, supra* at 62, 69, 75 and 78). Further, in *Maple Leaf*, the Commission ordered a respondent who engaged in unregistered trading and unregistered advising to pay an administrative penalty of $200,000 (*Maple Leaf*, *supra* at para. 8 and 55). Majestic sold shares from treasury to 88 shareholders for consideration of approximately $2.1 million (Merits Decision, *supra* at para. 145) and together with its predecessor also benefitted from a number of L&C Agreements. We also accept that Suncastle obtained consideration of $1,832,682 in the course of its non-compliance with the Act (Merits Exhibit V5). The scope and seriousness of their misconduct warrants a strong deterrent message.

[144] CBK's breaches affected eleven Majestic investors and occurred over a shorter period. We are not aware of any profit realized by CBK as a result of its non-compliance with Ontario securities law. CBK did breach key provisions of the Act, but its actions in furtherance of trade were on the direction of Adams and Kricfalusi as beneficiaries. In the circumstances, we agree with Staff that an administrative penalty of $10,000 against CBK would serve the necessary general and specific deterrence objectives.

[145] Given the multiple, repeated and widespread breaches of the Act by Adams, we find that it is appropriate for Adams to be ordered to pay an administrative penalty of $300,000. Adams benefited from the majority of the L&C Agreements executed by Majestic investors. He received over half a million dollars directly through his non-compliance with the Act and is responsible for much more as an officer and director of Majestic and Suncastle at various periods. It is particularly important that Adams and like-minded individuals be deterred from engaging in deceptive conduct, such as making prohibited representations of future listing. Again, we view Adams's ability to pay to be a weak mitigating factor that does not persuade us to reduce the administrative penalty sought by Staff.

[146] Bishop also engaged in multiple and repeated breaches of Ontario securities law, including making prohibited representations of future listing of Majestic shares. Like Adams, he was deemed to have not complied with Ontario securities law by virtue of his role as an officer and director of Majestic. As stated above, it is unclear whether Bishop realized a profit from his activities in breach of the Act. Bishop did however admit to having raised $2.5 million from investors through the sales of Majestic shares. Nevertheless, Bishop acknowledged the seriousness of his conduct, expressed remorse and was cooperative with Staff. Therefore, we find that an administrative penalty of $100,000 is more appropriate for Bishop.

[147] Kricfalusi's multiple acts contrary to the registration and prospectus requirements of the Act were repeated during the Material Time. Krifalusi did obtain $60,000 from five Majestic investors as a result of L&C Agreements. Further, she was deemed to have not complied with Ontario securities law in her role as an officer and director of Suncastle. However, she was not found to have made prohibited representations to investors. In these circumstances, we find that Kricfalusi should be ordered to pay an administrative penalty of $50,000 and that such an order would have the appropriate deterrent effect.

[148] We are not persuaded by Staff's submission that Loman should be ordered to pay an administrative penalty equal to Bishop's. While, as a salesperson, Loman violated several key provisions of the Act, he was not intimately involved in Majestic's management. Loman was not deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act as Bishop was for his role as officer and director or Majestic and was not found to have made prohibited representations with respect to future listing of Majestic shares as Bishop was (Merits Decision, *supra* at para. 223). Nevertheless, Loman engaged in multiple and repeated breaches of the Act and realized a profit of at least $145,250 as commissions from sales of Majestic shares. The seriousness of his misconduct is heightened by the fact that Loman was previously subject to sanctions of the ASC and continued to engage in the misconduct noted above, which suggests that a strong deterrent message is necessary for Loman and like-minded individuals. For these reasons, we consider an administrative penalty of $75,000 to be more appropriately linked to Loman's misconduct in this case.

[149] Under the circumstances, we find that it would be appropriate to order Majestic to pay $200,000, Suncastle to pay $200,000, CBK to pay $10,000, Adams to pay $300,000, Bishop to pay $100,000, Kricfalusi to pay $50,000 and Loman to pay $75,000 as administrative penalties for each respondent's failures to comply with Ontario securities law.

VIII. COSTS

[150] Pursuant to subsections 127.1(1) and 127.1(2) of the Act, the Commission has discretion to order a person or company to pay the costs of an investigation and hearing if the Commission is satisfied that the person or company has not complied with the Act or has not acted in the public interest. Rule 18.2 of the Commission's *Rules of Procedure* sets out a number of factors a panel may consider in exercising its discretion to order costs.

[151] We consider the costs sought by Staff of $365,351.31 to be generally reasonable and conservative. These total costs include the time of one litigator and one investigator from August 17, 2009 to March 14, 2013. Staff does not seek any costs related to time spent investigating, preparing or attending the Merits Hearing for its forensic accountant or assistant investigator. The request does include disbursement costs for court reporting, videoconferences for Alberta witnesses and travel expenses for the purpose of interviewing investor witnesses in Alberta.

[152] In support of this request, Staff provided written submissions, the Affidavit of Jeff Thomson, sworn March 14, 2013, supported by a summary statement of hours and fees, dockets of time incurred in the investigation and litigation phases of the proceeding, and disbursement invoices, as required by Rule 18.1(2)(b) of the *Rules of Procedure*. The weekly docket summary timesheet provided dates, numbers of hours worked and details of the tasks performed by each of

the Staff members listed. We reject the submissions of counsel for Loman with respect to inability to test costs. We are satisfied that the evidence supports an adequate record of costs as a whole.

[153] We accept Staff's submission that costs were higher in this case because of the large number of trades, the need to analyse trading, financial and banking records for Majestic and Suncastle, the involvement of out-of-province investors and the lack of admissions by the Respondents.

[154] We also accept that the focus of the investigation dealt primarily with Majestic, Suncastle and Adams. Suncastle and Adams should be ordered to pay $75,000 each for costs associated with the investigation and hearing of this matter. However, considering that Bishop cooperated, on behalf of Majestic, in providing necessary documentation for Staff's investigation, we find that a deduction of $25,000 should be granted to the company. Therefore, Majestic shall be ordered to pay $50,000 for costs. Bishop, who cooperated in voluntary interviews, but ultimately did not settle or testify, should be equally responsible for $50,000 with respect to costs of the investigation and hearing of this matter.

[155] We also agree with Staff's costs order sought for CBK. Time spent dealing with allegations against CBK was minimal, but again CBK did not settle. Therefore it is appropriate from CBK to pay $5,000 for costs. Similarly, Kricfalusi's conduct was confirmed by documentation and she did not prolong the proceeding, but also did not settle. We find that a more appropriate share of costs for Kricfalusi is $20,000.

[156] We reject Staff's submissions that Loman should pay $50,000 for costs. Although his testimony was ultimately not accepted, Staff's fresh evidence motion failed and Staff was able to prove only part of the allegations made against Loman. For these reasons, we have decided to reduce the costs payable by Loman to $30,000. Counsel for Loman is correct that the Act and the Commission's *Rules of Procedure* do not permit recovery of costs by the Respondents. In this case, Staff proved a number of breaches of the Act by Loman. We will not embark on a speculative analysis of what would occur in the event that Staff did not prove its allegations against a respondent.

[157] We agree that Staff's estimate of costs is generally reasonable in the circumstances and that allocation, less certain reductions noted above, is appropriate. We will order Majestic to pay $50,000, Suncastle to pay $75,000, CBK to pay $5,000, Adams to pay $75,000, Bishop to pay $50,000, Kricfalusi to pay $20,000 and Loman to pay $30,000 for the investigation and hearing costs incurred by the Commission, pursuant to section 127.1 of the Act.

IX. CONCLUSION

[158] We consider that it is important in this case to impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter and that will deter the Respondents and like-minded individuals from engaging in future conduct that violates securities law. Accordingly, we will make the following orders in the public interest:

1. With respect to Majestic and/or Suncastle:

    (a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in securities by Majestic and Suncastle cease permanently;

    (b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Majestic and Suncastle is prohibited permanently;

    (c) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Majestic and Suncastle permanently;

    (d) pursuant to clause 9 of subsection 127(1) of the Act, that Majestic and Suncastle shall pay $200,000 each as administrative penalties, that are designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

    (e) pursuant to clause 10 of subsection 127(1) of the Act, that Suncastle shall disgorge to the Commission $1,832,682 obtained as a result of its non-compliance with Ontario securities law, that is designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

    (f) pursuant to section 127.1 of the Act, that Majestic shall pay $50,000 and Suncastle shall pay $75,000 for costs incurred in the investigation and hearing of this matter.

2. With respect to CBK:

    (a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in securities by CBK cease for a period of 5 years;

    (b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by CBK is prohibited for a period of 5 years;

    (c) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to CBK for a period of 5 years;

    (d) pursuant to clause 9 of subsection 127(1) of the Act, that CBK shall pay an administrative penalty of $10,000, that is designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

    (e) pursuant to section 127.1 of the Act, that CBK shall pay $5,000 for costs incurred in the investigation and hearing of this matter.

3. With respect to Adams, Bishop, Loman and/or Kricfalusi:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in securities by Adams cease for a period of 20 years, Bishop cease for a period of 15 years, Loman cease for a period of 10 years and Kricfalusi cease for a period of 8 years;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Adams is prohibited for a period of 20 years, Bishop is prohibited for a period of 15 years, Loman is prohibited for a period of 10 years and Kricfalusi is prohibited for a period of 8 years;

(c) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Adams for a period of 20 years, Bishop for a period of 15 years, Loman for a period of 10 years and Kricfalusi for a period of 8 years;

(d) pursuant to clause 6 of subsection 127(1) of the Act, that Adams, Bishop, Loman and Kricfalusi are reprimanded;

(e) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act, that Adams, Bishop, Loman and Kricfalusi resign all positions as directors or officers of an issuer, registrant or investment fund manager;

(f) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, that Adams is prohibited for a period of 20 years, Bishop is prohibited for a period of 15 years, Loman is prohibited for a period of 10 years and Kricfalusi is prohibited for a period of 8 years from becoming or acting as officers or directors of any issuer, registrant or investment fund manager, except that Loman may act as a director or officer of an issuer that:

i. is wholly owned by one or more of himself or members of his immediate family;
ii. does not issue or propose to issue securities or exchange contracts to the public; and
iii. does not, directly or indirectly, trade in or distribute, advise in respect of trades or distributions of, or promote the purchase or sale of, securities or exchange contracts of any issuer;

(g) pursuant to clause 8.5 of subsection 127(1) of the Act, that Adams is prohibited for a period of 20 years, Bishop is prohibited for a period of 15 years, Loman is prohibited for a period of 10 years and Kricfalusi is prohibited for a period of 8 years from becoming or acting as registrants, investment fund managers or as promoters;

(h) pursuant to clause 9 of subsection 127(1) of the Act, that Adams shall pay $300,000, Bishop shall pay $100,000, Loman shall pay $75,000 and Kricfalusi

shall pay $50,000 as administrative penalties, that are designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(i) pursuant to clause 10 of subsection 127(1) of the Act, that Adams shall disgorge $516,000, Loman shall disgorge $145,250 and Kricfalusi shall disgorge $60,000 to the Commission as amounts obtained as a result of their non-compliance with Ontario securities law, that are designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

(j) pursuant to section 127.1 of the Act, that Adams shall pay $75,000, Bishop shall pay $50,000, Loman shall pay $30,000 and Kricfalusi shall pay $20,000 for costs incurred in the investigation and hearing of this matter.

[159] We will issue a separate order giving effect to our decision on sanctions and costs.

Dated this 29th day of November, 2013.

"Edward P. Kerwin"

Edward P. Kerwin

"Paulette L. Kennedy"

Paulette L. Kennedy