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

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

AND

IN THE MATTER OF BLUESTREAM CAPITAL CORPORATION, BLUESTREAM INTERNATIONAL INVESTMENTS INC., KROWN CONSULTING CORP., 1859585 ONTARIO LTD. (operating as SOVEREIGN INTERNATIONAL INVESTMENTS) and PETER BALAZS

REASONS AND DECISION
(SECTIONS 127 & 127.1)

Hearing:	In writing	
Decision:	March 4, 2015	
Panel:	Alan J. Lenczner	- Commissioner and Chair of the Panel
Submissions by:	Christie Johnson	- For the Ontario Securities Commission

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I. OVERVIEW

A. The Nature of the Hearing

[1] This is a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to determine whether it is in the public interest to make an Order against Bluestream Capital Corporation ("**Bluestream Capital**"), Bluestream International Investments Inc. ("**Bluestream International**"), Krown Consulting Corporation ("**Krown Consulting**"), 1859585 Ontario Inc. (operating as Sovereign International Investment) ("**Sovereign International**") (together, the "**Corporate Respondents**") and Peter Balazs ("**Balazs**") (collectively, the "**Respondents**").

[2] On June 26, 2014, the Commission ordered that the hearing on the merits was scheduled to commence on January 12, 2015 at 10:00 a.m. at the offices of the Commission. On December 29, 2014, the Commission converted this matter to a hearing in writing.

[3] Although served with the Notice of Hearing, Statement of Allegations and the Order converting the substantive matter to a hearing in writing, the Respondents have not appeared nor did they give submissions and have not objected to the matter on the merits being determined on the written record.

[4] The written record which I have reviewed consists of the compelled examinations of the Respondents, John Glaysher, Fred Camerlengo, Andy Nicolaidis and Adriano Lisi.

[5] The evidence includes a fulsome affidavit of Daniella Kozovski, Investigative Staff Counsel, setting out the corporate structure and inter-relationship of the Respondents, the representations made by the Respondents to investors, the investment contracts given to investors, the periodic client statements and the trading performance.

[6] The evidence also includes an affidavit of a Senior Forensic Accountant, Jody Sikora, who testified to the various bank accounts operated by the Respondents, the source and use of funds, the funds paid to investors and monies used for personal expenses by the Respondents and related persons.

B. Allegations Made by Staff of the Commission

[7] Staff of the Commission ("**Staff**") made the following allegations against the Respondents:

(a) the Respondents traded and engaged in, or held themselves out as engaging in, the business of trading in securities without being registered to do so and without an available exemption from the registration requirements, contrary to subsection 25(1)(a) of the Act for the period before September 28, 2009 and contrary to subsection 25(a) of the Act for the period on and after September 28, 2009;

(b) the Respondents traded in securities when a preliminary prospectus and prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act;

(c) the Respondents engaged or participated in acts, practices or courses of conduct relating to securities that they knew or ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(1)(b) of the Act;

(d) Balazs, being an officer or director of the Corporate Respondents, authorized, permitted or acquiesced in the non-compliance of the Corporate Respondents with Ontario securities law and accordingly failed to comply with Ontario securities law, contrary to section 129.2 of the Act; and

(e) the Respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

C. Overview of the Evidence

[8] This proceeding involves the solicitation and acceptance of investments from residents in Ontario for the purpose of trading in the foreign currency exchange market for profit by Balazs. The solicitation and acceptance of investor money by the Respondents occurred between August 2008 and May 2012 (the "Material Time").

[9] The Respondents received funds from, and entered into investment contracts with investors and facilitated their investment with Bluestream International. Balazs was an officer and director and the directing mind of all of the Corporate Respondents. During the Material Time, none of the Respondents were registered in any capacity with the Commission. Further, none of the Corporate Respondents filed a preliminary prospectus or prospectus with the Commission or filed any reports of exempt distributions.

[10] Balazs directed the flow of investor funds through various bank and trading accounts held in the name of the Corporate Respondents, all of which he had control over directly or indirectly. The financial records show a minority of investor funds going into trading accounts being traded in the foreign currency exchange market. Further, the financial records show that investor funds were used by Balazs for personal expenditures, paid to existing investors as withdrawals or redemptions, withdrawn in cash, or transferred to related parties.

[11] The evidence in this case establishes that Balazs and the Corporate Respondents engaged in, or held themselves out as engaging in, the business of trading and engaged in numerous acts in furtherance of trading. The evidence establishes the following:

(a) Balazs accepted and encouraged word of mouth referrals from existing investors;

(b) Balazs engaged in individual meetings with some investors where Balazs explained the investment opportunity and answered potential investors' questions about foreign currency exchange trading and the terms of the investment;

(c) Balazs created the investment agreement and other relevant documentation, including information sheets and website content in the nature of marketing material, which were distributed to investors;

(d) Balazs signed agreements with investors on behalf of Bluestream International and instructed them to direct their investment to Bluestream International;

(e) Balazs personally accepted investor funds and deposited those funds in banking and trading accounts in the names of the Corporate Respondents that were controlled, directly or indirectly, by Balazs;

(f) Balazs was responsible for directing the flow of investor funds through the bank and brokerage accounts in the names of the Corporate Respondents, which were controlled, directly or indirectly, by Balazs;

(g) Balazs made trades with investor money in the foreign currency exchange market; and

(h) Balazs directed the payment of interest and the repayment of principal to investors from the accounts of the Corporate Respondents and signed cheques making the interest and principal payments.

[12] There is compelling evidence to establish that the Respondents engaged in many acts of deceit, falsehoods and other fraudulent means which deprived investors of their funds, including that:

(a) Balazs represented that his trading in the foreign currency exchange market was profitable and that he was able to generate significant returns in the range of 5% monthly, when in fact no such success occurred;

(b) Balazs represented that investments in Bluestream International would be used to trade in the foreign currency exchange market and did not advise investors that their funds would be used for any other purpose, when in fact the vast majority of the funds were transferred into bank accounts held in the names of the Corporate Respondents and ultimately used to make withdrawal payments to other investors or pay for personal expenses, were withdrawn in cash, or paid to related parties;

(c) Balazs created and provided documents and materials to investors and made oral representations concerning the status of their investment, knowing that potential investors would rely upon the representations in making and maintaining their investment;

(d) Balazs created and distributed investor statements from Bluestream International and Sovereign International showing returns which in no way accurately reflected the overall losses he was experiencing in the trading accounts into which investor funds were transferred;

(e) Balazs represented to investors that they were receiving profits derived from trading in the foreign currency exchange market when in fact payments made to investors were primarily sourced from new investor funds; and

(f) Balazs raised a total of approximately CDN$2,620,815.00 and US$907,097.00 from 63 individuals and companies of which only CDN$1,076,891.00 and US$595,430.00 was paid back to investors, meaning the majority of investors have not recovered the full amount of their investment principal.

[13] The evidence demonstrated that Balazs knew he was undertaking dishonest acts which resulted in a deprivation to investors and therefore perpetrated a fraud:

(a) Balazs was the directing mind of all of the Corporate Respondents and controlled their day-to-day operations, including executing trades in the trading accounts held in the names of Bluestream International and Bluestream Capital;

(b) Balazs established and directed the activity in the bank and trading accounts in the names of the Corporate Respondents into which investor funds flowed;

(c) Balazs executed the trades and had access to the bank and trading statements for accounts in the names of the Corporate Respondents and knew that the trading was not profitable enough to meet his obligations to investors, yet he continued to accept investor funds; and

(d) Balazs was responsible for the purchase of personal items and services using funds from the bank accounts held in the names of the Corporate Respondents.

II. ANALYSIS AND DECISION

A. The Commission's Public Interest Jurisdiction

[14] The Commission's mandate in upholding the purposes of the Act is set out in section 1.1 of the Act as follows:

> (a) to provide protection to investors from unfair, improper or fraudulent practices; and

> (b) to foster fair and efficient capital markets and confidence in capital markets.

[15] The Commission is guided by certain fundamental principles in upholding and achieving the purposes of the Act. These principles include:

> (a) requirements for timely, accurate and efficient disclosure of information;
>
> (b) restrictions on fraudulent and unfair market practices and procedures; and
>
> (c) requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[16] The purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventative, intended to be exercised to prevent likely future harm to Ontario's capital markets.

[17] The scope of the Commission's discretion in defining the public interest is limited only by the general purposes of the Act.

[18] The evidence in this case is clear that the public interest has been abused.

B. Standard of Proof

[19] The civil standard of proof and the nature of the evidence which is required to meet that standard are integral to the duty of administrative tribunals to provide a fair hearing. It is well established that the standard of proof that must be met in administrative proceedings is the civil standard of the "balance of probabilities" *F. (H.) v. McDougall*, [2008] S.C.J. No. 54 ("***McDougall***"),

[20] The Supreme Court of Canada went on to state that "the evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*McDougall, supra,* at para. 46). However, this requirement of clear, convincing and cogent evidence does not elevate the standard of proof beyond the balance of probabilities.

III. UNREGISTERED TRADING IN SECURITIES

A. Importance of Registration in the Regulatory Context

[21] Participants who engage in the securities industry do so voluntarily and for their own profit. In exchange for the privilege of participating in the Ontario capital markets, individuals and companies must comply with Ontario securities laws. Compliance is paramount, ensuring the protection of the public and the integrity of the capital markets:

> [A]lthough activity in the securities sphere is of immense economic value to society generally, it must be remembered that participants engage in this licensed activity of their own volition and ultimately for their own profit. In return for permitting persons to obtain the fruits of participation in this industry, society requires that market participants also undertake certain corresponding obligations in order to safeguard the public welfare and trust. Participants must conform with the extensive regulations and requirements set out by the provincial securities commissions...
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> *British Columbia Securities Commission v. Branch,* [1995] 2 SCR 3 at para. 77.

[22] The registration requirement found in section 25 of the Act is one of the cornerstones of the regulatory framework of the Act. Registration serves an important gate-keeping function by ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public:

> The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by person who therein carry on such business.
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> *Gregory & Co. Inc. v. Quebec Securities Commission et al.*, [1961] SCR 584 at para. 11.

Through the registration process, the Commission attempts to ensure that those who engage in trading activities meet the necessary proficiency requirements, are of good character and satisfy the appropriate ethical standards.

B. Section 25: Prior to September 28, 2009

[23] Prior to September 28, 2009, subsection 25(1) of the Act stated that no person or company shall trade in a security unless that person or company is registered with the Commission as a dealer, or as a salesperson, partner, or officer of a registered dealer. Subsection 25(1)(a) read:

> No person or company shall,

> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer.

C. Section 25: On and After September 28, 2009

[24] The current subsection 25(1) came into force on September 28, 2009. The subsection provides that a person or company shall not engage in or hold himself, herself, or itself out as engaging in the business of trading unless the person or company is registered with the Commission. The current subsection reads as follows:

> Unless a person or company is exempt under Ontario securities law from the requirements to comply with this subsection, the person or company shall not engage in or hold himself, herself, or itself out as engaging in the business of trading in securities unless the person or company,
>
> (a) is registered in accordance with Ontario securities law as a dealer; or
>
> (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

[25] There is no question that the respondents contravened the requirements of registration.

D. Definition of "Trade"

[26] To incur liability under subsection 53(1) and both the previous and current version of section 25 of the Act, it is necessary for the Respondents to "trade in a security" within the meaning of the Act. The definition of "trade" under subsection 1(1) describes a very broad concept that encompasses not only any sale or disposition of securities for valuable consideration, but also includes any act, advertisement, solicitation, conduct, or negotiation directly or indirectly in furtherance of such a sale or disposition.

[27] The inclusion of the word "indirectly" in the definition of "trade" under the Act reflects an express intention on the part of the Legislature to capture conduct which seeks to avoid the registration and prospectus requirement by doing indirectly that which is prohibited directly.

[28] Pursuant to the definition in section 1(1), an "investment contract" is a "security" within the meaning of the Act. "Investment contract" is not a term defined in the Act, but its interpretation has been the subject of a long line of established jurisprudence.

1. **Investment Contract**

Supreme Court of Canada's Decision in *Pacific Coast Coin*

[29] In the leading case, *Pacific Coast Coin Exchange of Canada v. Ontario (Securities Commission)*, [1978] 2 SCR 112 ("***Pacific Coast Coin***"), the Supreme Court of Canada considered what constitutes an "investment contract" within the meaning of the Act.

[30] The Supreme Court of Canada's formulation of the test for establishing an "investment contract" in *Pacific Coast Coin* requires the following:

(a) an investment of money;

(b) with an intention or expectation of profit;

(c) a common enterprise, in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties; and

(d) that the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.

[31] The application of the investment contract test, as formulated by the Supreme Court of Canada in *Pacific Coast Coin*, must be consonant with the important public policy goals and mandate of the Commission. To achieve the purposes of the Act, the definition of "investment contract" must embody a flexible rather than a static principle, one that adapts to the countless investment schemes devised by those who seek to use others money on the promise of profits.

[32] Investors provided their funds to Bluestream International with the expectation of participation in profits arising from trades made in the foreign currency exchange market. In doing so, the Respondents and investors engaged in a common enterprise in which the success of the investment was dependent upon the efforts of Balazs, as the principal of Bluestream International, to engage in profitable trading. Balazs' "sole managerial efforts" were the only factor which determined the success or failure of the investment.

[33] It is clear in this case that the investment agreements offered by Bluestream International and that the investors purchased were "investment contracts" within the meaning of subsection (n) of the definition of "security", as defined in the Act and as interpreted by the case law cited above.

E. Acts in Furtherance of a Trade

[34] The definition of "trade" in subsection 1(1) of the Act provides five different categories of "acts in furtherance of trading". The definition under this subsection will be satisfied by any of the following that is found to be "directly or indirectly in furtherance of a trade": (1) an act; (2) an advertisement; (3) a solicitation; (4) any conduct; or (5) a negotiation.

[35] Cases considering the issue of acts in furtherance of trading reflect a contextual approach that examines the totality of the conduct and the setting in which it occurs. In this analysis, the primary emphasis is on the intended effect of the acts on those at whom they are directed, and on the proximity of the acts to an actual or potential trade in securities.

[36] The Commission has found a variety of activities that constitute acts in furtherance of trading, including:

(a) accepting money from investors and depositing investor cheques for the purchase of shares in a bank account;

(b) providing potential investors with subscription agreements to execute;

(c) issuing and signing share certificates;

(d) preparing and disseminating forms of agreements for signature by investors;

(e) meeting with individual investors; and

(f) preparing and disseminating promotional materials describing investment programs, including posting materials and information on internet websites.

[37] Solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of a trade.

[38] An act in furtherance of a trade does not require that an actual trade occur. Any claim that an actual trade must occur for there to be an act in furtherance of a trade would necessarily limit the effectiveness and negate the purpose of the Act, which is to regulate those who trade, or who purport to trade, in securities.

[39] During the Material Time, none of the Respondents were registered with the Commission in any capacity. The Respondents engaged in activities or a course of conduct that constituted "trading" or "acts in furtherance" of a trade and engaged or held themselves out as engaging in the business of trading securities without being registered

IV. DISTRIBUTING SECURITIES WITHOUT A PROSPECTUS

[40] Section 53 of the Act provides that no person or company shall trade in a security if the trade would be a distribution of the security unless a preliminary prospectus and prospectus have been filed and receipts issued by the Director. Subsection 53(1) reads:

> No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[41] The definition of "distribution" in the Act includes the following:

> (a) a trade in securities of an issuer that have not been previously issued,…

[42] As the Commission held in *Re Limelight Entertainment Inc. et al (2008),* 31 O.S.C.B. 1727, a prospectus is fundamental to the protection of the investing public because it ensures that investors have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed decision.

[43] The evidence establishes that there was no preliminary prospectus or prospectus filed and no receipt issued in this matter and that the investment contracts sold to investors constituted securities that were not previously issued.

V. FRAUD

[44] Section 126.1(1)(b) of the Act prohibits conduct relating to securities that a person or company knows or reasonably ought to know would perpetrate a fraud:

> (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> (b)…perpetrates a fraud on any person or company.

[45] Fraud is one of the most egregious securities regulatory violations and is both an affront to the individual investors directly targeted and decreases confidence in the fairness and efficiency of the entire capital market system generally.

[46] Although "fraud" is not defined in the Act, several Commission decisions have adopted the definition of the term in the decision of the British Columbia Court of Appeal

in *Anderson v. British Columbia (Securities Commission)* 192 B.C.C.A. 7, which in turn adopts the definition from the Supreme Court of Canada's decision in *R v. Théroux*, [1993] 2 S.C.R. 5 (S.C.C.) *("**Théroux**").* The elements of fraud under subsection 126.1(b) of the Act are as follows:

> ...the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist of actual loss or the placing of the victims' pecuniary interest at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist of knowledge that the victim's pecuniary interests are put at risk).
>
> *Théroux, supra,* at para. 27

[47] With respect to a corporate respondent, to prove a breach of subsection 126.1(1)(b) of the Act, it is sufficient to show that its directing mind knew that the acts of the corporation perpetrated a fraud. The evidence has established that Balazs was the directing mind and an officer and director of all the Corporate Respondents. The particulars of his fraudulent conduct are enumerated in paragraphs 12 and 13 herein.

VI. AUTHORIZE, PERMIT OR ACQUIESCE

[48] Pursuant to section 129.2 of the Act, a director or officer is deemed to be liable for a breach of securities law by a corporation where the director or officer authorized, permitted or acquiesced in the corporation's non-compliance with the Act.

A. "Director" and "Officer" Defined

[49] The degree of knowledge or intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. In *R. v. Armaugh Corp.*, 1993 CarswellOnt 906 ("***Armaugh***") the Ontario Court of Justice interpreted the words "authorized, permitted or acquiesced" as used in the Act:

> The terms "authorized", "permitted" and "acquiesced" imply, in the opinion of this court...

> In *Websters New World Dictionary*, 3rd college edition, *acquiesce* means to agree or consent quietly without protest. *Authorize* is defined in as part as to give official approval or permission, to give power or authority, to give justification for and *permit* is defined as to allow, consent to tolerate, to give permission, authorize permission, especially in writing, a document granting permission, licence, warrant.
>
> In my opinion, the definition of all three words implies a knowing or an intentional act [...]
>
> *Armaugh, supra* paragraph 20.

[50] Although the terms authorize, permit and acquiesce have been interpreted to include some form of knowledge or intention, the threshold for liability is low, as merely acquiescing to the conduct or activity in question will satisfy the requirements for liability; in other words, passive consent is all that is required.

[51] As an officer and director and directing mind of all of the Corporate Respondents during the Material Time, Staff submits that Balazs is liable for any breaches of Ontario securities law by the Corporate Respondents.

VII. RELIANCE ON LEGAL ADVICE RELEVANT TO SANCTIONS

[52] In his compelled interview with Staff, Balazs stated that he was advised by legal counsel that as long as he did not solicit the general public for investment then the conduct was not offside securities law. To date, Balazs has not provided any documentation or other information to Staff that would be of any probative value in this matter in determining whether there was appropriate reliance on legal advice. Further, the law makes clear that due diligence is no defence to unregistered trading and illegal distribution.

VIII. CONCLUSION

[53] I find that:

(a) During the Material Time, the Respondents traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so and without an available exemption from the registration requirements, contrary to subsection 25(1)(a) of the Act for the period before September 28, 2009 and contrary to subsection 25(1) of the Act for the period on and after September 28, 2009;

(b) During the Material Time, the Respondents traded in securities when a preliminary prospectus and prospectus had not been filed and receipts had

not been issued for them by the Director, contrary to subsection 53(1) of the Act;

(c) During the Material Time, the Respondents engaged or participated in acts, practices or courses of conduct relating to securities that they knew or ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(1)(b) of the Act;

(d) During the Material Time, Balazs, being an officer or director of the Corporate Respondents, authorized, permitted or acquiesced in the non-compliance of the Corporate Respondents with Ontario securities law and accordingly failed to comply with Ontario securities law, contrary to section 129.2 of the Act; and

(e) During the Material Time, the Respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

[54] An order will issue as follows:

(a) The Respondents have until March 16, 2015 to notify the Secretary of the Commission that they, or any of them, require an oral sanctions hearing, which, if required, will then be scheduled by the Secretary;

(b) Failing notification, Staff shall serve and file its written submissions on sanctions and costs by March 23, 2015;

(c) The Respondents shall serve and file their written submissions on sanctions and costs by April 20, 2015; and

(d) Staff shall serve and file reply submissions on sanctions and costs, if any, by April 27, 2015.

Dated at Toronto this 4th day of March, 2015.

"Alan J. Lenczner"
Alan J. Lenczner