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 INTERNATIONAL STRATEGIC INVESTMENTS, INTERNATIONAL STRATEGIC INVESTMENTS INC., SOMIN HOLDINGS INC., NAZIM GILLANI AND RYAN J. DRISCOLL

REASONS AND DECISION ON SANCTIONS AND COSTS

(Sections 127(1) and 127.1)

Hearing:	May 15, 2015	
Decision:	June 8, 2015	
Panel:	Alan Lenczner, Q.C.	- Commissioner and Chair of the Panel
Appearances:	Cameron Watson	- For the Ontario Securities Commission
	Nazim Gillani	- For himself
	David Sischy	- For Ryan J. Driscoll

TABLE OF CONTENTS

I. INTRODUCTION

[1] The hearing on sanctions and costs took place on May 15, 2015, 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*"), following the Reasons and Decision of March 6, 2015, regarding International Strategic Investments, International Strategic Investments Inc. (together, "ISI"), Somin Holdings Inc. ("Somin") (collectively, the "Corporate Respondents"), Mr. Nazim Gillani ("Gillani") and Mr. Ryan J. Driscoll ("Driscoll") (collectively, the "Respondents"). Staff, counsel for Driscoll and Driscoll attended in person. Gillani attended by phone from Vancouver.

[2] Staff and Driscoll filed written submissions and made oral submissions as to the appropriate sanctions. Gillani did not file written submissions, and when asked by me whether he wished to make oral submissions, he stated categorically that he did not.

[3] After the merits hearing, Gillani and the Corporate Respondents were found to have breached sections 25 and 126.1 of the *Act* in that, *inter alia*, they advised and engaged in the business of advising members of the public with respect to trading in securities without being registered to do so, traded in securities without being registered to do so and conducted themselves in a fraudulent manner in respect of securities.

[4] Gillani was further found to have breached section 38(3) of the *Act*, having made misleading oral and written representations when the Director had not provided written permission to Gillani to make those representations.

[5] Driscoll was found to have acted in furtherance of a trade without being registered to do so, contrary to section 25 of the *Act*.

[6] The Respondents' conduct was found to be contrary to the public interest and harmful to the integrity of the Ontario capital markets.

II. SANCTIONS

[7] The purpose of sanctions is to support the animating principles of the *Act*, namely the protection of the investing public and the integrity of the capital markets.[1]

[8] Sanctions are not intended to be either remedial or punitive.[2] Sanctions, for the most part, are forward looking. The Commission's role is to examine respondents' past conduct to determine whether it is more probable than not that it will occur again, and as a result of this analysis, put in place the restrictions it deems necessary to protect the investing public.[3] As well, one element, but not an overriding element, of the consideration of sanctions is general deterrence,[4] the sending of a message from the

[1] *Securities Act*, R.S.O. 1990, c. S.5, s. 1.1.
[2] *Committee for the Equal Treatment of Asbestos Minority Shareholders*, 2001 S.C.C. 37 at para. 42.
[3] *Mithras Management Ltd. (Re)* (1990), 13 O.S.C.B. 1600 at p. 5.
[4] *Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672 at paras. 61 and 64.

regulator that there will be consequences for the type of breach or misconduct found in the particular case.

[9] There are various types of sanctions that can be imposed, such as removal of the individual permanently, or for a number of years, from the capital markets, prohibition of the individual from being an officer or director of an issuer, disgorgement of unlawfully obtained monies from investors, an administrative penalty and payment of costs. Each type of sanction must be separately considered against its need to correct past injury and to restrain future conduct. The character of the respondent, the degree of culpability, and his or her expressions of remorse, if any, are factors, among others, to be weighed.[5]

A. GILLANI AND THE CORPORATE RESPONDENTS

[10] During the Material Time, Gillani carried the title of Chief Executive Officer of ISI, which, although represented by Gillani to investors as a corporation, was never incorporated. Gillani was not a director of Somin; however, he relied on nominee directors while he in fact controlled Somin and its banking.

[11] Gillani and the Corporate Respondents were found to have breached fundamental sections of the *Act* and to have committed fraud on a number of investors. These contraventions were intentional and part of a sophisticated scheme set up to derive the most benefit to Gillani and his co-conspirators.

[12] Gillani made no response to Staff's written or oral submissions on sanctions and costs. He never showed any remorse for his conduct. At the merits hearing, it was proven that Gillani had no bank account, no credit card and a peripatetic address.

[13] I have no hesitation in determining that Gillani is an opportunist who will likely abuse the capital markets in the future and harm investors unless restrained. I see no reason to depart from Staff's submissions and find that the appropriate sanctions against him and the Corporate Respondents are:

(a) a permanent trading ban;

(b) that they jointly and severally disgorge $719,000, being the amount they wrongfully received from investors;

(c) that they jointly and severally pay an administrative penalty of $1 million for their several breaches of the *Act*;

(d) that Gillani be permanently banned from being a director or officer of an issuer, registrant or investment fund manager; and

(e) that Gillani be permanently prohibited from becoming or acting as a registrant, investment fund manager or a promoter.

[5] *M.C.J.C. Holdings Inc., (Re)* (2002), 25 O.S.C.B. 1133 at paras. 10, 16-19 and 26.

[14] Gillani and the Corporate Respondents should jointly and severally pay the costs of the lengthy, complex investigation and of the oral hearing, a hearing that they requested, in an amount of $200,000.

B. DRISCOLL

[15] Driscoll brought investors to presentations hosted by Gillani, the objective of which was to have them sign subscription agreements to invest in HD Retail Solutions Inc. ("HDRS"). Driscoll neither set up the investment scheme nor was he involved in any way in HDRS. He did not pressure the investors. Two investors, Burke and Campanile, gave affidavits stating that they did not rely on Driscoll to make their investments. Driscoll was found liable for a breach of section 25, in that he acted in furtherance of a trade by failing to take any steps to ensure that Gillani and Somin were registered with the Commission and facilitated, through his conduct, unlawful purchases of securities by 19 investors who, in the aggregate, lost $500,000.

[16] In the range of misconduct harmful to investors and the capital markets, Gillani stands at the high end and Driscoll at the lower end. The sanctions appropriate to Driscoll should reflect this reality.

1. DISGORGEMENT

[17] Driscoll acknowledged that he received $66,000 as commission by cheques and cash for his recruitment of investors, mostly friends and family. Staff claims that he benefitted to the extent of $98,000. It was Staff's burden to prove, on a balance of probabilities, that Driscoll did benefit in an amount of $98,000.[6] The evidence in that regard, a $40,000 payment to Peninsula Rentals and Leasing, was equivocal and unclear. I find that only an amount of $66,000 was clearly established as being received by Driscoll. I order that he disgorge $66,000.

2. MARKET BANS

[18] Driscoll's activity in recruiting investors to Gillani's scheme could have been avoided had he taken the simple expediency of checking the OSC website to determine if Gillani was registered with the Commission as he claimed to Driscoll he was. Had he done so, I am persuaded he would not have brought the 19 people to the investor presentations. Staff seeks a 15-year trading and director and officer ban. I think that such a sanction overreaches the likelihood that Driscoll will transgress the *Act* again. Most Canadians need access to the capital markets to build wealth for their retirements. A 15-year ban for Driscoll would be punitive rather than protective. In the circumstances of this case, it is appropriate that Driscoll be banned from trading until a period of two years has passed from the date on which he pays the Commission the disgorgement of $66,000, as well as the administrative penalty and costs, assessed later in these reasons.

[6] *Re Limelight Entertainment Inc. et al.* (2008) 31 O.S.C.B. 12030 at para. 53.

[19] None of Driscoll's conduct involved him in the role of an officer or a director. There is no evidence that he occupied or occupies any such position. As a consequence, I see no justification for imposing any officer or director ban.

3. ADMINISTRATIVE PENALTY

[20] The statutorily permitted administrative penalty of up to $1 million per breach of the *Act* serves as a personal and general deterrent to restrain Driscoll and others from conducting themselves contrary to the provisions of the *Act*. An administrative penalty, if applicable, serves to ensure that unlawfully obtained money does not act as an interest-free loan and that sanctions amount to more than the mere cost of doing business,[7] but it cannot be so excessive that it is vengeful retribution. In this case, an administrative penalty of $30,000 meets that balance.

III. COSTS

[21] Costs are a recoverable item under the *Act*. It is quite usual in circumstances where there are Settlement Agreements that Staff does not seek costs even though Staff has conducted the necessary investigation, which may be long, involved and complex. The reasoning behind this must be that the respondent is being given credit for his or her cooperation in settling the allegations by admitting guilt at an early stage, thus avoiding the tribunal's adjudicative process. Where no settlement is achieved, it seems right that costs of the adjudicative process should, *prima facie*, be recoverable. Whether or not the full investigative costs that preceded the Notice of Hearing and Statement of Allegations should also be ordered is debatable and will depend on the circumstances, including how cooperative the respondent is in facilitating the adjudicative process while maintaining his right to vigorously oppose the allegations. In this case, Driscoll cooperated throughout and, indeed, was prepared to allow the proceedings to be by way of a written hearing. He was not cross-examined by Staff. His submissions, through his counsel, were brief, to the point and helpful. An award of costs of $15,000 is appropriate and recognizes the minimal amount of investigative and adjudicative process occupied by Driscoll as contrasted with Gillani.

IV. DECISION

[22] I will issue an order giving effect to my decision on sanctions and costs as follows:

Regarding Gillani and the Corporate Respondents:

(a) Pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities by Gillani and the Corporate Respondents shall cease permanently;

[7] *Al-Tar Energy Corp. (Re)* (2011), 43 O.S.C.B. 447 at para. 47.

(b) Pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Gillani and the Corporate Respondents is prohibited permanently;

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

(d) Pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the *Act*, Gillani shall resign any positions he holds as a director or officer of an issuer, registrant or investment fund manager;

(e) Pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the *Act*, Gillani is prohibited permanently from becoming or acting as a director or officer of an issuer, registrant or investment fund manager;

(f) Pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, Gillani is permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;

(g) Pursuant to paragraph 10 of subsection 127(1) of the *Act*, Gillani and the Corporate Respondents shall jointly and severally disgorge to the Commission $719,000, and the disgorged amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b) of the *Act*;

(h) Pursuant to paragraph 9 of subsection 127(1) of the *Act*, Gillani and the Corporate Respondents shall jointly and severally pay an administrative penalty of $1 million for their multiple failures to comply with Ontario securities law, and the administrative penalty shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b) of the *Act*;

(i) Pursuant to subsections 127.1(1) and (2) of the *Act*, Gillani and the Corporate Respondents shall jointly and severally pay investigation and hearing costs to the Commission in the amount of $200,000;

Regarding Driscoll:

(j) Pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities by Driscoll shall cease until a period of 2 years has passed from the date on which the Commission receives in full the payments set out in subparagraphs 22(m), (n), and (o);

(k) Pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Driscoll is prohibited until a period of 2 years has passed from the date on which the Commission receives in full the payments set out in subparagraphs 22(m), (n), and (o);

(l) Pursuant to paragraph 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to Driscoll until a period of 2 years has passed from the date on which the Commission receives in full the payments set out in subparagraphs 22(m), (n), and (o);

(m) Pursuant to paragraph 10 of subsection 127(1) of the *Act*, Driscoll shall disgorge to the Commission $66,000, and the disgorged amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b) of the *Act*;

(n) Pursuant to paragraph 9 of subsection 127(1) of the *Act*, Driscoll shall pay an administrative penalty in the amount of $30,000, and the administrative penalty shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b) of the *Act*; and

(o) Pursuant to subsections 127.1(1) and (2) of the *Act*, Driscoll shall pay investigation and hearing costs to the Commission in the amount of $15,000.

Dated at Toronto this 8th day of June, 2015.

"Alan J. Lenczner"

_____

Alan J. Lenczner, Q.C.