



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF
ANDRE LEWIS**

**REASONS AND DECISION
(Subsections 127(1) and (10) of the Act)**

Hearing: In writing

Decision: August 31, 2015

Panel: Alan J. Lenczner, Q.C. - Chair of the Panel
Timothy Moseley - Commissioner

Submissions by: Keir D. Wilmut - For Staff of the Commission

Andre Lewis - For himself

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REASONS AND DECISION

I. STAFF'S REQUEST

- [1] The Ontario Securities Commission (the "Commission") must consider whether Andre Lewis ("Mr. Lewis"), convicted in Ontario under subsection 380(1)(a) of the *Criminal Code*, R.S.C. 1985, c. C-46 (the "*Criminal Code*") of one count of defrauding the public in an amount exceeding \$5,000 and sentenced to seven years in prison, should be made subject to sanctions, pursuant to paragraph 1 of subsection 127(10) and subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act").

II. THE ONTARIO CRIMINAL CONVICTION AND SENTENCE

- [2] Mr. Lewis's misconduct took place between January 1, 2004 and October 27, 2011 (the "Material Time").
- [3] On June 18, 2014, following a 39-day trial held between April and June 2014 (the "Trial"), a jury found Mr. Lewis guilty of one count of defrauding the public of an amount exceeding \$5,000.
- [4] It was found that during the Material Time, Mr. Lewis defrauded 33 investors of \$7,527,630 in an elaborate mortgage investment scam in the nature of a Ponzi scheme. He solicited investors by offering an attractive rate of interest of 10% and through slick promotional ads which advertised that the investment was safe and secure. He backed up this claim with a promissory note he gave investors promising the return of their principal at the end of the term.
- [5] The evidence at Trial established that Mr. Lewis used investor funds as follows:

Mr. Lewis did invest a small portion of the money he received from investors in mortgages that did not turn out to be as safe and secure as he advertised. Most of the properties were sold under power of sale at a loss to the investors. The bulk of the money however, was deposited into various bank accounts held by Mr. Lewis and his wife. The bank records demonstrate that most of the investors' money was used to pay "interest" to other investors, pay company and personal expenses, make point of sale purchases and make cash withdrawals. ... The evidence at trial showed that Mr. Lewis used the funds to support a lifestyle that included sending his children to private school, being driven around to meet potential investors in a white stretch limousine, taking his staff to Trinidad to celebrate Carnival and finally finishing and furnishing his corporate office.

(*R. v. Lewis*, Transcript of Oral Reasons of J. Corrick, dated July 11, 2014 at page 1 line 32 to page 2 line 21)

- [6] 33 investors testified that they had all lost funds and were harmed. Some of these investors gave Mr. Lewis all of their savings and others mortgaged their homes to invest with him. Mr. Lewis also targeted vulnerable individuals. Specifically, Justice Corrick emphasized the following in her oral reasons:

Many of the victims were retired or near retirement, and invested the money they were using to finance their retirements with Mr. Lewis. Nine victims invested a total of \$1,149,339 in self-directed registered savings plans with Mr. Lewis. Ten of the victims were more than 70 years old at the time of the trial, six of them were more than 80 years old.

Victim Impact Statements were filed on behalf of 17 of the victims. They speak of the financial and emotional devastation Mr. Lewis's crime has caused in their lives. Many people wrote that they endure sleepless nights, stress, anxiety and lack of trust. Some have had suicidal thoughts. Many expressed dismay that they are now unable to pass on an inheritance to their children.

Some victims who were retired have been forced to seek employment to avoid losing their homes.

(*R. v. Lewis*, Transcript of Oral Reasons of J. Corrick, dated July 11, 2014 at page 2 line 29 to page 3 line 16)

- [7] Justice Corrick sentenced Mr. Lewis on July 11, 2014 to a term of imprisonment of seven years. Mr. Lewis was given credit for four years of pre-sentence custody and as a result is serving three years in prison from the date of sentencing. Restitution orders were also made in favor of each of the individual victims. In addition, Mr. Lewis was ordered to pay a fine in the amount of \$7,527,630 within 10 years of his release from prison, in default of which he is sentenced to five years in prison consecutive to the three years presently being served. He is also prohibited from communicating with the victims in this matter.
- [8] In support of her sentence, Justice Corrick explained that "...convictions for large scale, long-term frauds involving a breach of trust that have devastating consequences for the victims will attract a substantial penitentiary term" (*R. v. Lewis*, Transcript of Oral Reasons of J. Corrick, dated July 11, 2014 at page 8 lines 7 to 11).

III. STAFF'S POSITION

- [9] Staff, in written submissions, seeks an order that:
- trading in any securities by Mr. Lewis cease permanently;
 - Mr. Lewis be permanently prohibited from acquiring any securities;
 - any exemptions contained in Ontario securities law not apply to Mr. Lewis permanently;
 - Mr. Lewis resign any positions he holds as director or officer of any issuer, registrant or investment fund manager;
 - Mr. Lewis be prohibited permanently from becoming or acting as an officer or director of any issuer, registrant or investment fund manager; and
 - Mr. Lewis be prohibited permanently from becoming or acting as a registrant, an investment fund manager or a promoter.

IV. MR. LEWIS'S POSITION

[10] Mr. Lewis provided correspondence, received by the Commission on July 31, 2015, stating the following:

... please be advised that I will concede to the conditions of the Order as stated in the Written Submissions of STAFF OF The ONTARIO SECURITIES COMMISSION ...

V. DECISION

[11] In our view, it is in the public interest to sanction Mr. Lewis. The criminal conviction and reasons for sentencing imposed by Justice Corrick meet the threshold requirements of paragraph 1 of subsection 127(10) of the Act. Mr. Lewis has been convicted in Ontario of one count of defrauding the public of an amount exceeding \$5,000, contrary to section 380(1)(a) of the *Criminal Code*. This conviction arose from transactions, business or course of conduct related to securities. Specifically, Mr. Lewis was found to have defrauded 33 investors of \$7,527,630 in a large-scale, sophisticated mortgage investment scam. He issued promissory notes to investors in exchange for their investments, which Mr. Lewis led investors to believe would be in private mortgages.

[12] Mr. Lewis has provided correspondence stating that he concedes to the conditions of the order requested by Staff. Mr. Lewis has not provided us with any information that would persuade us that Staff's requested order is not appropriate in the circumstances.

[13] Our mandate is to consider the public interest in providing protection to investors from unfair and fraudulent practices, and to foster fair and efficient capital markets.

[14] We have considered the following:

a. This matter involves very serious misconduct. As described in Justice Corrick's oral reasons:

... this was a large-scale sophisticated fraud that was perpetrated over several years. Thirty-three victims lost a total of \$7,527,630. Mr. Lewis created slick promotional material, including DVDs, brochures, radio and television ads were designed to lure and deceive investors.

(*R. v. Lewis*, Transcript of Oral Reasons of J. Corrick, dated July 11, 2014 at page 9 lines 6 to 11)

b. Mr. Lewis took advantage of investors (many of whom were vulnerable and elderly), manipulated them and breached their trust. For example, to influence investors he would shower them with gifts or use religion as a means to gain their trust. Justice Corrick considered it an aggravating factor, and we agree that:

... Mr. Lewis breached the trust of the people who entrusted their money to him. He was their advisor. He was licensed and regulated by FSCO. He abused that status to take advantage of people. His guile had no limits. He used any and all means to develop a rapport with his victims to extract their money.

(*R. v. Lewis*, Transcript of Oral Reasons of J. Corrick, dated July 11, 2014 at page 9 lines 13 to 19)

- c. The impact on the victims in this matter has been devastating, and financial losses are only part of the losses they have suffered. Many investors now suffer from depression, anxiety, loss of joy and loss of trust. As noted by Justice Corrick, "Mr. Lewis was indiscriminate about who he preyed upon. He took money from people who he knew could not afford to lose it" (*R. v. Lewis*, Transcript of Oral Reasons of J. Corrick, dated July 11, 2014 at page 10 lines 7 to 9).

- [15] We find it telling that Mr. Lewis's crime was driven by pure greed. As described by Justice Corrick in her oral reasons:

Mr. Lewis used his victims' money for his personal benefit. He did not stop on his own accord, but persisted even when things began to unravel. Mr. Lewis continued to lure victims knowing that their money was in jeopardy.

(*R. v. Lewis*, Transcript of Oral Reasons of J. Corrick, dated July 11, 2014 at page 10 lines 10 to 16)

- [16] It was also a finding in the criminal proceeding that Mr. Lewis has not acknowledged that what he did was criminal. Justice Corrick found that:

[Mr. Lewis] does not appear to understand or acknowledge that taking people's money on the understanding that the money would be invested in mortgages is fraud if he does not invest it in mortgages, whether or not he intended to lose the victims' money. His statement to the court prior to sentencing focused on his desire to grow his business and make money for his clients. This refusal to recognize his criminality increases his risk of reoffending.

(*R. v. Lewis*, Transcript of Oral Reasons of J. Corrick, dated July 11, 2014 at page 10 lines 18 to 28)

- [17] In such circumstances, when large scale fraud is involved and investors have suffered severe harm, permanent bans for cease trading and market prohibitions are necessary to provide both specific and general deterrence. Such sanctions are prospective to protect Ontario investors in the future. We rely on the principle articulated in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43 that "The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets".

- [18] We order the following:

- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Mr. Lewis shall cease permanently;

- ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Mr. Lewis shall be prohibited permanently;
- iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Mr. Lewis permanently;
- iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Mr. Lewis shall resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager;
- v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Mr. Lewis shall be prohibited permanently from becoming or acting as an officer or director of any issuer, registrant or investment fund manager; and
- vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Mr. Lewis shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

Dated at Toronto this 31st day of August, 2015.

"Alan J. Lenczner"

Alan J. Lenczner, Q.C.

"Timothy Moseley"

Timothy Moseley