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Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
THE *SECURITIES ACT*, RSO 1990, c S.5**

- AND -

**IN THE MATTER OF
LAWRENCE ZEIBEN, GRIT INTERNATIONAL INC.
and TEXAS PETROLEUM INC.**

REASONS AND DECISION

Hearing: In writing

Decision: February 4, 2016

Panel: Timothy Moseley Commissioner

Submissions by: Clare Devlin For Staff of the Commission

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REASONS AND DECISION

I. OVERVIEW

- [1] On May 5, 2014, the Alberta Securities Commission (the "**ASC**") issued a decision¹ in which it found that Lawrence Zeiben ("**Zeiben**"), Grit International Inc. ("**Grit**") and Texas Petroleum Inc. ("**Texas Petroleum**"; collectively, the "**Respondents**") had made material representations and had engaged in fraud, and that Grit had engaged in an illegal distribution of its shares.
- [2] The ASC found that all of the above conduct was contrary to various provisions of Alberta's *Securities Act*² (the "**ASC Act**") and National Instrument 43-101 *Standards of Disclosure for Mineral Projects* ("**NI 43-101**").
- [3] As a result, on October 21, 2014, the ASC issued an order imposing various sanctions against the Respondents (the "**ASC Order**").³ The sanctions, more particularly described below, essentially removed the Respondents from Alberta's capital markets permanently, subject to certain exceptions for transactions effected by Zeiben for his own benefit. The ASC also ordered that Zeiben pay an administrative penalty and costs.
- [4] Enforcement staff ("**Staff**") of the Ontario Securities Commission (the "**Commission**") seeks an order pursuant to subsection 127(1) of the Ontario *Securities Act* (the "**Act**")⁴ that mirrors most of the terms of the ASC Order. Staff relies upon subsection 127(10) of the Act, which provides in paragraph 4 that this Commission may make an order against a person or company under subsection 127(1) if that person or company is subject to an order made by a securities regulatory authority in another jurisdiction.
- [5] For the reasons that follow, I find that it is in the public interest to issue the order requested by Staff.

II. THE ASC PROCEEDING

- [6] The ASC found, among other things, that:
 - a. Zeiben was the controlling mind of Grit and of Texas Petroleum;
 - b. Zeiben was the sole director and officer of Texas Petroleum, and was a director, the controlling shareholder, and the CEO of Grit;
 - c. through its press releases and websites, Grit solicited purchases of its shares;
 - d. Grit issued press releases that materially misdescribed the activities in which it engaged;
 - e. Grit issued press releases containing false and unsupported claims of mineral reserves;
 - f. Grit engaged in an illegal distribution of its securities; and

¹ *Re Zeiben*, 2014 ABASC 167 ("**ASC Merits Decision**").

² RSA 2000, c S-4.

³ *Re Zeiben*, 2014 ABASC 412 ("**ASC Sanctions Decision**").

⁴ RSO 1990, c S.5.

- g. Texas Petroleum caused to be published on the internet information that misrepresented the true facts concerning its assets and proposed acquisitions.⁵

[7] As a result, the ASC ordered that:

- a. Zeiben pay an administrative penalty of \$250,000;
- b. Zeiben resign any position he held as a director or officer of an issuer, registrant or investment fund manager;
- c. Zeiben be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
- d. Zeiben be prohibited from trading in or purchasing any securities, except through a registrant in:
 - (i) registered retirement savings plans, registered retirement income funds or tax-free savings accounts (as defined in the *Income Tax Act* (Canada) or locked-in retirement accounts for Zeiben's benefit;
 - (ii) one other account for Zeiben's benefit; or
 - (iii) both, provided that:
 - (a) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and
 - (b) Zeiben does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;
- e. none of the exemptions contained in Alberta securities laws apply to Zeiben permanently;
- f. Grit and Texas Petroleum be prohibited from trading in or purchasing securities, and none of the exemptions contained in Alberta securities laws apply to them, permanently; and
- g. Zeiben pay costs of the ASC's investigation and hearing.⁶

III. PRELIMINARY MATTERS

A. Notice to the Respondents

[8] The Notice of Hearing commencing this proceeding specified that the hearing would take place on August 28, 2015.

[9] At the hearing before me on that date, none of the Respondents appeared. Staff tendered an affidavit of Lee Crann, sworn August 24, 2015,⁷ that described steps taken to serve the Respondents with the Notice of Hearing, the Statement of Allegations, and disclosure.

⁵ *ASC Merits Decision* at paras 69, 82, 88, 91, 95, 105-107, 113-114 and 127.

⁶ *ASC Sanctions Decision* at paras 79-81.

⁷ Marked as Exhibit 1 in this proceeding.

[10] Subsection 7(1) of the *Statutory Powers Procedure Act*⁸ (the “**SPPA**”) and Rule 7.1 of the Commission’s *Rules of Procedure*⁹ (the “**OSC Rules**”) provide that where notice of the hearing has been given to a party, but the party fails to appear, the tribunal may proceed in the absence of the party and the party is not entitled to further notice in the proceeding.

[11] I find that the Respondents were given proper notice of this proceeding and that I may proceed in their absence.

B. Written Hearing

[12] The Notice of Hearing also indicated that Staff would apply to continue this proceeding by way of written hearing, as provided for in section 5.1 of the SPPA and Rule 11.5 of the OSC Rules.

[13] At the August 28 hearing, I granted Staff’s application to proceed in writing. I ordered that Staff serve and file its materials by September 8 and that the Respondents serve and file any responding materials by October 6.

[14] Staff served¹⁰ and filed a hearing brief¹¹ containing the ASC Merits Decision and the ASC Sanctions Decision, along with written submissions and a brief of authorities. No materials were received from any of the Respondents.

IV. ISSUES

[15] As noted above, subsection 127(10) of the Act provides that the Commission may make an order against a person or company under subsection 127(1) if that person or company is subject to an order, made by a securities regulatory authority in another jurisdiction, that imposes sanctions.

[16] Staff’s application for an order pursuant to subsection 127(1), made in reliance upon subsection 127(10), therefore presents two principal issues:

1. Were the Respondents subject to an order made by a securities regulatory authority in another jurisdiction?
2. If so, what sanctions, if any, should the Commission order against the Respondents?

V. ANALYSIS

A. Were the Respondents subject to an order made by a securities regulatory authority in another jurisdiction?

[17] The ASC Order is an order of a securities regulatory authority in another jurisdiction. The order imposes sanctions, conditions, restrictions and requirements on the Respondents.

[18] The ASC Order therefore meets the test prescribed by subsection 127(10) of the Act, and the Commission may make an order under subsection 127(1) if it is in the public interest to do so.¹²

⁸ RSO 1990, c S.22.

⁹ (2014), 37 OSCB 4168.

¹⁰ According to the affidavit of service of Lee Crann sworn September 17, 2015, marked as Exhibit 2 in this proceeding.

¹¹ Marked as Exhibit 3 in this proceeding.

B. If so, what sanctions, if any, should the Commission order against the Respondents?

1. Introduction

[19] Subsection 127(10) of the Act does not itself empower the Commission to make an order; rather, it provides a basis for an order under subsection 127(1). The Commission must still consider whether it is in the public interest, in the context of the Ontario capital markets, to make an order under subsection 127(1), and if so, what the order ought to be.¹³

2. Inter-jurisdictional co-operation

[20] In determining whether it would be in the public interest to make an order pursuant to section 127 of the Act, I am guided by section 2.1 of the Act, which provides:

In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:

[...]

5. The integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.

[21] By explicitly referring to orders made by securities regulatory authorities in other jurisdictions, subsection 127(10) of the Act clearly promotes this legislative objective. This goal is also well recognized in decisions of the Supreme Court of Canada¹⁴ and of the Commission.¹⁵

[22] As the Commission has previously held, “[t]he decision of a foreign jurisdiction stands as a determination of fact for the purpose of the Commission’s considerations under subsection 127(10) of the Act.”¹⁶

[23] In this case, the findings of the ASC with respect to the Respondents’ conduct are compelling reasons to conclude that it is in the public interest to restrict the Respondents’ participation in Ontario’s capital markets. Had the Respondents engaged in the same conduct in Ontario, it is almost certain that they would have contravened corresponding provisions of Ontario securities law.

[24] A nexus to Ontario is not a necessary pre-condition to the exercise of the Commission’s jurisdiction under subsection 127(1), in reliance upon subsection 127(10).¹⁷ However, Staff submits that in this case the Respondents’ conduct warrants an order designed to protect Ontario investors from the Respondents by preventing or limiting the Respondents’ participation in Ontario’s capital markets. I agree with that submission.

[25] In addition, as the Supreme Court of Canada has held, it is appropriate to consider general deterrence in making an order under subsection 127(1).¹⁸ An order in this

¹² *Re Euston Capital Corp* (2009), 32 OSCB 6313 at para 46.

¹³ *Re Elliott* (2009), 32 OSCB 6931 at para 27.

¹⁴ *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 51; *Global Securities Corp. v. British Columbia (Securities Commission)*, 2000 SCC 21 at para 27.

¹⁵ *Re JV Raleigh Superior Holdings Inc.* (2013), 36 OSCB 4639 at para 21; *New Futures Trading International Corp. (Re)* (2013), 36 OSCB 5713 at para 27.

¹⁶ *Re JV Raleigh Superior Holdings Inc.*, *supra* note 15 at para 16.

¹⁷ *Re Cho (c.o.b. Chosen Media and Groops Media)* (2014), 37 OSCB 7285; *Re Lough* (2014), 37 OSCB 10744; *Re Sundell* (2014), 37 OSCB 10755).

¹⁸ *Cartaway Resources Corp.*, 2004 SCC 26 at para 60.

proceeding would have a deterrent effect upon those who might engage in similar conduct in Ontario.

[26] Accordingly, I find that it is in the public interest to make an order against the Respondents pursuant to section 127(1) of the Act.

3. Appropriate sanctions

[27] The purpose of section 127 of the Act, and the principles that “animate” its application, were reviewed by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*.¹⁹ In that decision, the Court held²⁰ that “in considering an order in the public interest”, the Commission shall have regard to both of the two purposes of the Act, as set out in section 1.1 of the Act:

- 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.

[28] The Court then described the purpose of the section 127 public interest jurisdiction as being “neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario’s capital markets”.²¹ Further, the Court held that section 127 orders are not punitive. Rather, their purpose is to:

...restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. 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.²²

[29] In this case, Staff asks the Commission to order that Zeiben resign any positions he holds as director or officer of any issuer, registrant or investment fund manager, and that he be prohibited permanently from becoming or acting as officer or director of any issuer, registrant or investment fund manager. Staff also requests an order that any exemptions contained in Ontario securities law not apply to Zeiben permanently, and that Zeiben be permanently prohibited from trading in or acquiring any securities, subject to an exception that would allow Zeiben to trade in or purchase securities through a registrant who has first been given a copy of the ASC Order and a copy of the Order of the Commission in this proceeding, if granted, in:

- (i) registered retirement savings plans, registered retirement income funds or tax-free savings accounts (as defined in the *Income Tax Act* (Canada) or locked-in retirement accounts for Zeiben’s benefit;
- (ii) one other account for Zeiben’s benefit; or
- (iii) both, provided that:
 - (a) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

¹⁹ 2001 SCC 37 (“*Asbestos*”).

²⁰ *Ibid* at para 41.

²¹ *Ibid* at para 42, adopting the words of Laskin J.A. from the court below.

²² *Ibid* at para 43, citing with approval *Mithras Management Ltd. (Re)* (1990), 13 OSCB 1600.

- (b) Zeiben does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question.
- [30] Staff also asks that Grit and Texas Petroleum be permanently prohibited from trading in or acquiring any securities, and that any exemptions contained in Ontario securities laws not apply to them permanently.
- [31] The Respondents' misconduct was serious. The ASC found that the Respondents perpetrated a fraud and made materially misleading or untrue statements, and that Grit engaged in an illegal distribution of its shares. As the ASC noted, "Zeiben, Grit and Texas Petroleum engaged in the deliberate creation of a public façade to the detriment of shareholders" and "the inevitable happened. The façade attracted investors, pumped up the share price, increased share sales, and, when the façade came down, disappointed investors lost their investment."²³
- [32] The Respondents' conduct, had it occurred in Ontario, would likely have attracted consequences similar to those ordered by the ASC.
- [33] Appropriately, Staff does not seek an order in Ontario that would require the payment of an additional administrative penalty. The order that Staff seeks would restrict the Respondents' access to and participation in Ontario's capital markets in the same way as was done in Alberta.
- [34] In my view, the order requested by Staff is proportionate to the misconduct as found by the ASC, would serve to protect Ontario's investors and capital markets, would further the objective of inter-jurisdictional co-operation, and would have an appropriate general deterrence effect in Ontario.

VI. CONCLUSION

- [35] For the reasons set out above, I find that it is in the public interest to impose the sanctions requested by Staff.
- [36] I will therefore issue an order to the following effect:
 - (a) against Zeiben that:
 - i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in, or acquisition of, any securities by Zeiben shall cease permanently, except that Zeiben is not precluded from trading in, or purchasing, securities through a registrant (if, prior to such trade or acquisition, he gives the registrant a copy of the order resulting from this decision) in:
 - a. registered retirement savings plans, registered retirement income funds or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for Zeiben's benefit;
 - b. one other account for Zeiben's benefit; or
 - c. both, provided that:
 - 1. the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

²³ *ASC Merits Decision*, supra at paras. 135-136.

2. Zeiben does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;
- ii. pursuant to paragraph 3 of subsection 127(1) of the Act, none of the exemptions contained in Ontario securities laws shall apply to Zeiben permanently;
 - iii. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Zeiben resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager; and
 - iv. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Zeiben be prohibited permanently from becoming or acting as an officer or director of any issuer, registrant or investment fund manager;
- (b) against Grit that:
- i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in, or acquisition of, any securities by Grit shall cease permanently; and
 - ii. pursuant to paragraph 3 of subsection 127(1) of the Act, none of the exemptions contained in Ontario securities laws shall apply to Grit permanently; and
- (c) against Texas Petroleum that:
- i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in, or acquisition of, any securities by Texas Petroleum shall cease permanently; and
 - ii. pursuant to paragraph 3 of subsection 127(1) of the Act, none of the exemptions contained in Ontario securities laws shall apply to Texas Petroleum permanently.

Dated at Toronto this 4th day of February, 2016.

"Timothy Moseley"

Timothy Moseley