



Ontario
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
7997698 CANADA INC., carrying on business as
INTERNATIONAL LEGAL AND ACCOUNTING SERVICES INC., WORLD
INCUBATION CENTRE, or WIC (ON), JOHN LEE also known as CHIN LEE, and
MARY HUANG also known as NING-SHENG MARY HUANG**

- AND -

**IN THE MATTER OF
A MOTION BY 1785605 ONTARIO INC., JINA LIU and JING XIANG XIE**

- AND -

**IN THE MATTER OF
A MOTION BY FANG YONG, QIANG WU, FEI DAI, MEI CHEN, YANG LIU, XINWEI
ZHANG, SHENGPENG GE, WENYUAN GU, ZHIXIN YIN, BING YAN, JIANCHAO
YAN, FANJIE ZHOU, PING ZHOU, WEN ZHOU, DEPING CHEN, JIANLING LI, YIN
HUI DONG and MIN ZHANG**

- AND -

**IN THE MATTER OF
A MOTION BY YANG CHEN and HUA JUN**

REASONS AND DECISION ON MOTIONS

Hearing: June 13, 2016

Decision: June 23, 2016

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

Appearances: Gavin Smyth - For Staff of the Commission

John Lee (a.k.a. Chin Lee) - On his own behalf and on behalf of
7997698 Canada Inc. and World
Incubation Centre

William Genereux - For Charles Yong, Fang Yong, Fei Dai,
Qiang Wu, Mei Chen, Yang Liu, Xinwei
Zhang, Shengpeng Ge, Wenyan Gu,
Zhixin Yin, Bing Yan, Jianchao Yan,
Fanjie Zhou, Ping Zhou, Wen Zhou,
Deping Chen, Jianling Li, Yin Hui Dong
and Min Zhang

Jay Naster - For 1785605 Ontario Inc., Jina Liu and
Jiang Xiang Xie

Robert Calderwood - For Dain City Developments Inc.

Neil Searles - For Yang Chen and Hua Jun

REASONS AND DECISION

[1] Multiple motions were brought by separate groups of investors for orders of the Commission:

- i. revoking Freeze Directions and a Certificate of Direction issued by the Commission on November 21, 2014 to facilitate an order allocating payments to third parties, including the moving investors;
- ii. allocating and directing the distribution of monies that the Respondents, John Lee and 7997698 Canada Inc. (“**799 Inc.**”), were ordered to disgorge to the Commission pursuant to a settlement approval Order issued by the Commission on April 11, 2016; and
- iii. facilitating the sale of commercial real property partially owned by the Respondents.

[2] The Respondents also brought a motion seeking variation of the ordered disgorgement amount and lifting of the Certificate of Direction, or alternatively, seeking the setting aside of the Settlement Agreement that was approved by the Commission’s Order on April 11, 2016.

[3] Staff resisted the motions.

[4] The Panel's adjudicative jurisdiction in approving a settlement agreement ends with the issuance of a settlement approval Order, which in this case provided for the disgorgement of \$4,789,581 by the Respondents to the Commission. The Panel has no jurisdiction or authority to address restitution to individual investors.

[5] The allocation and distribution of disgorged funds is an administrative, not adjudicative, function of the Commission. The disgorgement ordered in this case was designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the *Securities Act*, which authorizes the Commission to either i) allocate the monies to or for the benefit of third parties, or ii) use the monies for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets. This Panel does not have the administrative jurisdiction to further specify how disgorged funds shall be allocated or distributed to harmed investors.

[6] At the settlement stage, the calculation of disgorgement amounts focuses on the monies obtained by respondents. Those calculations do not address: 1) whether all or any of the funds unlawfully received by respondents is either available or realizable, 2) the legitimate claims of individual investors, or 3) the practicalities of distributing funds to investors where, for example, addresses may be unknown. In the vast majority of situations, amounts ordered to be disgorged are not wholly realizable to allocate to harmed investors in full.

[7] This case is different in that approximately \$3.1 million is available in frozen bank accounts of the Respondents and, in addition, there is frozen real estate owned 2/3 by the Respondents and 1/3 by a third party, Dain City Developments Inc. A sale of the real estate would make additional funds available for disgorgement to the Commission.

[8] Paragraph 13 of the Settlement Agreement is quite instructive in that it indicates how Staff arrived at the disgorgement amount of approximately \$4.79 million. It states:

Through 799 [Inc.] and Lee's conduct described above [*i.e.*, unregistered trading], \$6,779,581 was paid from or on behalf of approximately fifty-six investors into bank accounts controlled by the Respondents in Ontario. A total of \$1,990,000 was repaid to or on behalf of seventeen investors from 799 [Inc.]'s bank accounts in Ontario. The difference between the funds received by the relevant Ontario bank accounts and the funds repaid is \$4,789,581.

[9] The fifty-six investors referred to in the Settlement Agreement were individually identified in an affidavit sworn by Stephanie Collins, a Senior Forensic Accountant in the Commission's Enforcement Branch, along with the amounts paid and repaid to those investors. Those investors are listed in Appendix A of these Reasons. The difference between amounts the fifty-six investors paid to the Respondents and the amounts repaid to or on behalf of seventeen of those investors is actually \$5,140,751. But, as Staff explained in these motions, the final disgorgement amount represents a compromise and was reduced by \$351,170 to acknowledge that the Respondents had paid more from Ontario bank accounts than had been paid into Ontario bank accounts (likely because some investors had paid funds into Chinese bank accounts but were repaid from Ontario accounts). In other words, Staff explained that the disgorgement amount was set at a level to deprive the Respondents of illegally obtained amounts, not with a view to satisfying all investor claims.

[10] Of the identified fifty-six investors, twenty-one were represented at the hearing of these motions, along with another three claimed investors who are not listed in the Collins Affidavit (1785605 Ontario Inc., Jina Liu and Fang Yong). The investors came before the Commission requesting variation of the settlement approval Order, which ordered disgorgement to the Commission, to instead specifically direct allocation of disgorgement amounts to the moving investors.

[11] As previously stated, the Panel has no authority to grant the requested allocations. The Commission is not a court of law. It does not adjudicate civil litigation claims as between harmed investors and those who took their money. It does not make orders for restitution. In exercising its public interest mandate, the Commission's jurisdiction is regulatory (that is, protective and preventative), not compensatory or remedial.¹ Section 127 of the *Securities Act* does not empower the Commission to make orders requiring a party to make compensation or restitution or to pay damages to affected individuals. Disgorgement under section 127 of the *Securities Act* is not the same as damages and is not intended to compensate individual investors.

[12] Staff argued that the appropriate mechanism to deal with these issues is to refer the matter of the revocation of the Freeze Directions and the distribution of the frozen funds to the Court, which is already involved in these matters as a result of applications brought before it. The Court continued the Freeze Directions and, along with the Commission, also has the power to revoke the Freeze Directions. Staff submitted, quite correctly, that the moving investors have no standing in restitutionary proceedings before the Commission, nor are they persons directly

¹ *Fischer v IG Investment Management Ltd*, 2012 ONCA 47 at para 46.

affected by the Commission's settlement approval Order. To apply for a revocation of a freeze direction (pursuant to subsection 126(7)), a person must be directly affected. The use of the word "directly" before "affected" connotes the legislative intent to restrict the category of persons who can move to clarify, vary or revoke a direction. When the Freeze Directions were issued, the harmed investors were not "directly affected". The Respondents were directly affected in that their bank accounts were frozen. There was no impact to the investors. If anything, they would have a better chance of receiving back their investments than if the Commission had not issued the Freeze Directions.

[13] Furthermore, subsection 127(3.1) of the *Securities Act* expressly provides that a person is not entitled to participate in a Commission proceeding involving disgorgement orders solely on the basis that the person may be entitled to receive any disgorged amount.

[14] It is therefore appropriate for me to refer the revocation of the Freeze Directions and the restitutionary process to the Commercial List of the Superior Court of Justice. In so doing, however, I wish to make the following observations:

- i. Both Staff and the Respondents have agreed to the disgorgement amount of \$4,789,581. Neither should be allowed to resile from that agreement, which has been approved by Order of this Panel. Since the settlement agreement has already been approved by Order of the Commission, there should be no room to permit either party to challenge the receipt of investor monies into the bank accounts of 799 Inc. resulting from breaches of the *Securities Act*.
- ii. Further and in any event, there appears to be no issue with respect to 35 of the investors (*i.e.*, the first 35 investors listed in Appendix A to these Reasons), whose outstanding amounts appear to total \$3,475,717, based on the calculations in the Collins Affidavit. If the addresses of these investors are known, they should receive a *pro rata* amount of the sum that is ultimately collected from the Respondents. In the interim, it may also be appropriate to make a partial distribution from the amount frozen in the Respondents' bank accounts at this time.
- iii. With respect to the balance of the investors, if the Respondents can demonstrate that those investors have been repaid the amount identified as owing in Staff's calculations, then it seems reasonable that the Respondents should not be required to disgorge that amount twice.
- iv. A parcel of land was purchased at 555 Canal Bank Street in Welland, Ontario, owned 2/3 by the Respondents and 1/3 by a non-investor, third party, Dain City Developments Inc. Since the time of the purchase, the property has been divided into 3 separate titles, known as the North, South and Middle Lands. A Certificate of Direction is registered on all three parcels. The Commission is prepared to order the lifting of the Certificate of Direction on one or more of the parcels in order to allow for a court-supervised sale. The Court should contemplate a court-supervised sale of one or more of the parcels to garner the additional funds that may be necessary to satisfy the disgorgement order. Since unpaid realty taxes are rapidly accruing, it

would be in everyone's interest if a process was set in motion immediately to accomplish any necessary sale.

[15] For the foregoing Reasons, the investors' and the Respondents' motions are dismissed. Staff should forthwith apply to the Commercial List for directions as to the most effective and expedient process that should be engaged to return monies to investors from the frozen bank accounts and the frozen real estate.

Dated at Toronto this 23rd day of June, 2016.

"Alan J. Lenczner"

Alan J. Lenczner, Q.C.

**Appendix A –
Investors Identified by Staff for Disgorgement Amount Calculations²**

Investor	Amount Deposited to Respondent Accounts	Amount Repaid by Respondents	Amount Outstanding
1. Hua Chen	\$0.00	\$0.00	\$0.00
2. Jun Qian Zhang	\$163,500.00	\$130,000.00	\$33,500.00
3. Yu Yize	\$168,340.00	\$140,000.00	\$28,340.00
4. Niu Yu	\$115,380.00	\$150,000.00	\$0.00
5. Zhang Lei	\$150,000.00	\$120,000.00	\$30,000.00
6. Chen XunLi	\$148,410.00	\$0.00	\$148,410.00
7. Jiuhong Li	\$0.00	\$120,000.00	\$0.00
8. Weizhong Xu	\$149,907.00	\$120,000.00	\$29,907.00
9. Pang Ning	\$159,930.00	\$120,000.00	\$39,930.00
10. Peizhong Yang	\$163,418.00	\$120,000.00	\$43,418.00
11. Hongya Ni	\$163,430.00	\$120,000.00	\$43,430.00
12. Xiadan Li	\$163,371.00	\$120,000.00	\$43,371.00
13. Su Shengwen	\$99,980.00	\$120,000.00	\$0.00
14. Yuxia Zhu	\$49,970.00	\$120,000.00	\$0.00
15. Li Wenjie	\$164,980.00	\$120,000.00	\$44,980.00
16. Jian Wen Song	\$13,500.00	\$120,000.00	\$0.00
17. Hui Xu	\$160,000.00	\$120,000.00	\$40,000.00
18. Guo Hong Qi	\$160,000.00	\$120,000.00	\$40,000.00
19. Hua Jun	\$153,500.00	\$0.00	\$153,500.00
20. Yang Chen	\$163,535.00	\$0.00	\$163,535.00
21. Yin Hui Dong	\$156,390.00	\$0.00	\$156,390.00
22. Ping Zhou	\$180,073.50	\$0.00	\$180,073.50
23. Wenyuan Gu	\$170,150.00	\$0.00	\$170,150.00
24. Yang Liu	\$170,010.00	\$0.00	\$170,010.00
25. Fanjie Zhou	\$179,823.50	\$0.00	\$179,823.50
26. Xinwei Zhang	\$179,761.50	\$0.00	\$179,761.50
27. Mei Chen	\$180,025.00	\$0.00	\$180,025.00

² The figures in the “Amount Outstanding” column for individual investors were not shown in the Collins Affidavit, but were calculated for the purposes of these Reasons as the difference between the Amount Deposited and the Amount Repaid.

Investor	Amount Deposited to Respondent Accounts	Amount Repaid by Respondents	Amount Outstanding
28. Wen Zhou	\$179,953.50	\$0.00	\$179,953.50
29. Bing Yan	\$165,041.50	\$0.00	\$165,041.50
30. Shengpeng Ge	\$169,846.00	\$0.00	\$169,846.00
31. Jianchao Yan	\$177,723.00	\$0.00	\$177,723.00
32. Deping Chen	\$179,923.50	\$0.00	\$179,923.50
33. Qiang Wu	\$164,775.00	\$0.00	\$164,775.00
34. Zhixin Yin	\$180,000.00	\$0.00	\$180,000.00
35. Fei Dai	\$159,900.00	\$0.00	\$159,900.00
36. Charles Yong	\$199,980.00	\$0.00	\$199,980.00
37. Jiang Xiang Xie	\$880,000.00	\$0.00	\$880,000.00
38. Shu Jian Hong	\$99,095.00	\$0.00	\$99,095.00
39. He Jun Feng	\$51,085.00	\$0.00	\$51,085.00
40. Lan Xiu Qiang	\$51,085.00	\$0.00	\$51,085.00
41. Shen Gui Qin	\$51,085.00	\$0.00	\$51,085.00
42. Liu Juan	\$50,000.00	\$0.00	\$50,000.00
43. Lei MingJie	\$49,970.00	\$0.00	\$49,970.00
44. Luo Jin Suo	\$48,975.00	\$0.00	\$48,975.00
45. Shi Wen Jie	\$48,875.00	\$0.00	\$48,875.00
46. Jianling Li	\$25,016.00	\$0.00	\$25,016.00
47. Min Zhang	\$20,000.00	\$10,000.00	\$10,000.00
48. Lin Xiao Yu	\$15,000.00	\$0.00	\$15,000.00
49. AiHua Sui	\$14,976.00	\$0.00	\$14,976.00
50. Sun Li Tao	\$10,000.00	\$0.00	\$10,000.00
51. Yao Xiao Hung/Wu, Li	\$10,000.00	\$0.00	\$10,000.00
52. Jin Xiu Zhu	\$9,990.00	\$0.00	\$9,990.00
53. Zhang XiaoLi	\$9,986.00	\$0.00	\$9,986.00
54. Yuan Shu Feng	\$9,970.00	\$0.00	\$9,970.00
55. Zhao Ying	\$9,976.00	\$0.00	\$9,976.00
56. Wei Guo Jun	\$9,970.00	\$0.00	\$9,970.00
TOTALS	\$6,779,581.00	\$1,990,000.00	\$5,140,751.00