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Securities
Commission

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Citation: Bouji (Re), 2017 ONSEC 38
Date: 2017-10-24

**IN THE MATTER OF
HANANE BOUJI, GLOBAL RESP CORPORATION
and GLOBAL GROWTH ASSETS INC.**

**REASONS AND DECISION
(Subsection 8(3) of the *Securities Act*, RSO 1990, c S.5)**

Hearing: August 23, 2017

Decision: October 24, 2017

Panel: Timothy Moseley
Deborah Leckman
William J. Furlong
Commissioner and Chair of the Panel
Commissioner
Commissioner

Appearances: Kevin Richard
Brendan Monahan
For Hanane Bouji, Global RESP
Corporation and Global Growth
Assets Inc.

Michelle Vaillancourt
Michael Denyszyn
For Staff of the Commission

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REASONS AND DECISION

I. OVERVIEW

- [1] Ms. Hanane Bouji and two firms at which she is a registrant, Global RESP Corporation (**Global RESP**) and Global Growth Assets Inc. (**GGAI**) (together, the **Firms**), request a review of a decision of a Director of the Ontario Securities Commission. The Director denied Ms. Bouji's and the Firms' application to amend Ms. Bouji's registration to designate her as the ultimate designated person (**UDP**) for the Firms.
- [2] Subsection 27(1) of the *Securities Act*¹ (the **Act**) requires the Director to amend a person's registration as requested "unless it appears to the Director" that the person is "not suitable for registration" or the proposed amendment "is otherwise objectionable."
- [3] Staff of the Commission does not contend that Ms. Bouji is "not suitable for registration" as UDP. Instead, Staff maintains that the proposed amendment to her registration is objectionable, given:
- the history of non-compliance by the Firms and by Ms. Bouji's father Mr. Issam El-Bouji (**Mr. Bouji**), which resulted in the imposition of terms and conditions on Global RESP's registration in 2003, 2004, 2005, and 2012;
 - a settlement dated April 14, 2014, entered into by, among other parties, Staff, Mr. Bouji, and the Firms (the **2014 Settlement**),² which resulted in Mr. Bouji's permanent suspension as the UDP of the Firms and a nine-year prohibition against him acting as an officer or director of any registrant;
 - that while Ms. Bouji has been chair of Global RESP, Mr. Bouji has been in charge of sales and recruiting at that firm;
 - Ms. Bouji's lack of independence from her father; and
 - the critical role of a UDP in promoting compliance at a registered firm.
- [4] The Applicants deny that the proposed amendment is objectionable and submit that it should be granted because:
- Mr. Bouji's involvement in sales and recruiting activities at Global RESP does not contravene the terms of the 2014 Settlement;
 - there is no requirement that a new UDP of the Firms be independent; and
 - Ms. Bouji is capable of fulfilling the role of UDP for the Firms.
- [5] At the conclusion of the hearing on August 23, 2017, we reserved our decision. On September 5, 2017, we issued an order dismissing this application, for reasons to follow.³ These are our reasons.
- [6] We find for the sole purpose of this proceeding that even after a new Chief Executive Officer (**CEO**) and UDP was appointed, Mr. Bouji has acted as an officer of Global RESP, despite the prohibition against him from doing so.

¹ RSO 1990, c S.5.

² *Re El-Bouji* (2014), 37 OSCB 4125.

³ *Re Hanane Bouji* (2017), 40 OSCB 7521.

- [7] We also find that during the time Ms. Bouji has been chair of the board for each of the Firms, neither she nor the Firms took appropriate steps to restrict Mr. Bouji's activities in order to ensure compliance with the terms of the 2014 Settlement. Ms. Bouji had both the obligation and opportunity to do so.
- [8] Ms. Bouji's failure to do so is especially troubling, given the Firms' and Mr. Bouji's record of non-compliance. That non-compliance increases the risk of future harm to investors and therefore underscores the importance of implementing measures designed to ensure compliance with the 2014 Settlement and with Ontario securities law.
- [9] In these circumstances, Ms. Bouji's conduct is inconsistent with what is expected from an individual seeking to become a UDP. The proposed amendment to Ms. Bouji's registration therefore appears to be "otherwise objectionable," and we refuse the application to amend her registration.

II. BACKGROUND

A. The Firms

- [10] GGAI, a registered investment fund manager, is the administrator and investment fund manager of the Legacy Education Savings Plan (formerly Global Education Trust Plan) and the Advanced Education Savings Plan (together, the **Plans**). The Plans are designed for investors who want to save for their children's post-secondary education.
- [11] Global RESP, a registered scholarship plan dealer, is the distributor of the Plans. Global RESP's dealing representatives sell units of the Plans directly to investors.
- [12] Mr. Bouji is the sole shareholder of both GGAI and Global RESP.

B. The 2014 Settlement

- [13] On April 14, 2014, Mr. Bouji, the Firms, and two other respondents entered into the 2014 Settlement with Staff. The agreement proposed to resolve Staff's allegations that the respondents in that proceeding had committed numerous contraventions of Ontario securities law. On April 16, 2014, the Commission issued an order (the **2014 Order**)⁴ approving the settlement and imposing the agreed-upon sanctions.
- [14] At the time of the 2014 Settlement, Mr. Bouji was the Firms' CEO and UDP. He had been the UDP of Global RESP since December 2009 and the UDP of GGAI since August 2011.
- [15] In the 2014 Settlement, the respondents admitted that, among other things:
- a. GGAI had directed one of the Plan's portfolio advisers to purchase \$30 million in subordinated notes using funds from Plan subscribers, resulting in approximately \$1.95 million in finders' fees for a company owned by Mr. Bouji. GGAI was not registered to advise in securities. The purchases of the notes were effected without advice from a registered portfolio manager, and resulted in conflicts of interest that were neither referred to the Plan's independent review committee nor disclosed in the Plan's prospectuses;

⁴ *Re El-Bouji* (2014), 37 OSCB 4112.

- b. the Firms' compliance systems did not meet reasonable compliance practices;
 - c. Mr. Bouji breached his obligations as the UDP of the Firms, as set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)*; and
 - d. Mr. Bouji, as an officer and director of the Firms, authorized, permitted and/or acquiesced in the breaches of Ontario securities law by the Firms.
- [16] The 2014 Order provided, among other things, that:
- a. Mr. Bouji was required to disgorge approximately \$1.95 million to the Commission;
 - b. within nine months of the order (*i.e.*, by January 2015), each of the Firms was to "appoint a new independent CEO and UDP to replace [Mr.] Bouji," with "independent" having the meaning set out in sections 1.4 and 1.5 of National Instrument 52-110 *Audit Committees*, "except that the point of reference shall be [Mr.] Bouji or any entities owned or controlled by [him]";
 - c. Mr. Bouji was permanently suspended as UDP of each Firm, which suspension would be effective on the earlier of the date on which the Firm found a new independent CEO and UDP, or nine months from the date of the 2014 Order;
 - d. within 60 days, each of the Firms was required to "create and permanently maintain" an independent board of directors (as defined in the 2014 Order), the independent members of which were to be approved by a manager in the Commission's Compliance and Registrant Regulation (**CRR**) branch; and
 - e. Mr. Bouji was prohibited, for a period of nine years, from becoming or acting as a director or officer of any reporting issuer, registrant, or investment fund manager.
- [17] As reflected above, the requirement that each Firm maintain an independent board of directors, and the suspension of Mr. Bouji as UDP of the Firms, were permanent. The 2014 Order did not specify a time period for the requirement of an independent CEO and UDP.
- [18] In January 2015, as required by the 2014 Order, the Firms appointed a new and independent UDP.
- C. The applications**
- [19] The newly appointed UDP now intends to retire, and Ms. Bouji wants to succeed him. On February 17, 2017, the Applicants submitted an application to the Commission to amend Ms. Bouji's registration to add the category of UDP for the Firms (the **Amended Registration Application**).
- [20] The parties agree that because Ms. Bouji is Mr. Bouji's daughter, she is not "independent" as that term is defined in the 2014 Order.
- [21] In various correspondence, CRR Staff advised the Applicants that it opposed the Amended Registration Application. In at least some of that correspondence, CRR Staff maintained that for the nine-year period referred to in the 2014 Order,

during which Mr. Bouji is prohibited from being an officer or director of any registrant, any new UDP would have to be independent. On April 13, 2017, CRR Staff recommended to the Director that the Amended Registration Application be refused.

- [22] In response to CRR Staff's opposition, the Applicants moved before the Commission for directions relating to the 2014 Order or, alternatively, for an order compelling the Director to amend Ms. Bouji's registration as requested. On May 2, 2017, the Commission dismissed the motion on jurisdictional grounds.⁵
- [23] Following the dismissal of the motion, the Amended Registration Application was placed before the Director for his decision. On June 22, 2017, he found that the proposed registration of Ms. Bouji as UDP of the Firms is "otherwise objectionable." He therefore refused the proposed amendment to her registration.
- [24] On June 28, 2017, the Applicants applied to the Commission for this review of the Director's decision (the **Review Application**).

III. LEGAL FRAMEWORK

- [25] Subsection 8(3) of the Act provides that on a review of a Director's decision, the Commission "may by order confirm the decision under review or make such other decision as the Commission considers proper."
- [26] The Review Application is a fresh consideration of the matter. The Commission may substitute its own decision for that of the Director, and need not show deference to that decision. Staff must still demonstrate, on a balance of probabilities (as it was required to do before the Director), that the proposed amendment to Ms. Bouji's registration ought not to be granted.⁶

IV. ISSUES AND ANALYSIS

A. Introduction

- [27] Staff cites two principal concerns in support of its position that Ms. Bouji's amended registration is objectionable and should be refused.
- [28] First, Staff points to Ms. Bouji's lack of independence from Mr. Bouji. While Staff now acknowledges (contrary to its earlier view) that the 2014 Order does not require a new UDP to be independent, Staff contends that in all the circumstances, including the Firms' and Mr. Bouji's history of non-compliance, and Mr. Bouji's ongoing active role within Global RESP, the registration of any non-independent UDP would be objectionable.
- [29] Second, Staff emphasizes that Mr. Bouji's involvement in Global RESP has been in contravention of the 2014 Order, and has taken place while Ms. Bouji has been chair of the Firms' boards. Therefore, she has failed to meet her obligation to ensure that the Firms took appropriate steps to ensure Mr. Bouji's and the Firms' compliance. Staff submits that given the Firms' and Mr. Bouji's history of non-compliance, her registration as the Firms' UDP would be objectionable.

⁵ *Re Global RESP Corporation*, 2017 ONSEC 11.

⁶ *Re Sawh*, 2012 ONSEC 27 at paras 16-17 (**Sawh**), citing *Re Triax Growth Fund Inc.*, 2005 ONSEC 16 at para 25.

[30] In response, the Applicants submit that: (i) Mr. Bouji has not contravened the 2014 Order; (ii) there is no requirement that a new UDP be independent; and (iii) Ms. Bouji has presented evidence to show that she is capable of fulfilling the role of the Firms' UDP.

[31] The Amended Registration Application therefore presents the following issues:

- a. What is the relevance, if any, of Mr. Bouji's and the Firms' history of non-compliance?
- b. Has Mr. Bouji acted, or does it appear that he has acted, as an officer or director of Global RESP since the new CEO and UDP was appointed?
- c. If so, does Ms. Bouji's role as chair during the relevant time mean that her proposed registration as UDP appears to be objectionable? and
- d. To what extent, if any, does Ms. Bouji's lack of independence from Mr. Bouji make her proposed registration as UDP appear to be objectionable?

[32] We begin by discussing the standard applicable to applications for registration, following which we address each of the above issues in turn.

B. Standard applicable to registration applications

[33] It is well established that registration is a privilege, not a right.⁷

[34] Section 27 of the Act prescribes the test for determining whether the privilege of registration should be granted. Subsection 27(1) of the Act provides that upon receipt by the Director of an application, the Director "shall" amend a registration unless the applicant appears not to be suitable for the amended registration or the proposed amendment appears to be objectionable. As noted above, Staff does not claim that Ms. Bouji is not suitable for registration. Staff relies solely on its assertion that the proposed amendment to Ms. Bouji's registration is objectionable.

[35] The phrase "otherwise objectionable" is not defined in the Act. However, the Commission has previously determined that a purposive approach should be taken in considering whether registration is objectionable. The purposes of the Act, as described in section 1.1, are to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.⁸

[36] In promoting the purposes of the Act, the Commission must have regard to a number of fundamental principles, including the "requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants."⁹

C. What is the relevance, if any, of Mr. Bouji's and the Firms' history of non-compliance?

[37] As noted in paragraph [3] above, Staff's concerns about the Firms' compliance with Ontario securities law resulted in the imposition of terms and conditions on the Firms' registrations in 2003, 2004, 2005, and 2012. Subsequent allegations led to the 2014 Settlement, which resolved an enforcement proceeding.

⁷ *Re Sterling Grace & Co. Ltd.*, 2014 ONSC 24 at para 145; *Sawh* at para 142.

⁸ *Sawh* at para 289.

⁹ s 2.1(2)(iii) of the Act.

[38] Those matters are concluded. However, that does not preclude us from taking the history into account when considering the Amended Registration Application. Indeed, we must do so. Mr. Bouji's role as sole shareholder, CEO, and UDP of Global RESP from 2009 to 2014, his continuing role as sole shareholder, and his own admitted contraventions of Ontario securities law as set out in the 2014 Settlement make us concerned about whether the Firms will operate in a compliant manner. The greater Mr. Bouji's current involvement in the Firms, the more our investor protection concerns are heightened, given Mr. Bouji's central role in the misconduct admitted in the 2014 Settlement and the accompanying sanctions specifically designed to limit his influence on decision-making within the Firms.

D. Has Mr. Bouji acted, or does it appear that he has acted, as an officer or director of Global RESP since the new CEO and UDP was appointed?

1. Staff's position

[39] In written submissions, Staff contends that it appears that Mr. Bouji has acted as an officer or director of Global RESP despite the terms of the 2014 Order. However, at the hearing, Staff did not pursue the submission that Mr. Bouji has acted as a director. We therefore confine our analysis to whether Mr. Bouji has acted as an officer.

[40] Further, while Staff says that we need not find that Mr. Bouji actually contravened the 2014 Order, Staff submitted at the hearing that the evidence does support that conclusion.

2. Applicable factors

[41] As the Commission stated in *Re Momentas Corporation (Momentas)*,¹⁰ in determining whether an individual has acted as an officer or director, it is important to assess "whether, under the particular circumstances, the alleged [officer or] director is an integral part of the mind and management of the company."¹¹ In *Momentas*, the Commission set out a non-exhaustive list of factors relevant to that assessment. Those factors include consideration of whether the individual:

- a. is responsible for the supervision, direction, control, and operation of the company; and
- b. has negotiated on behalf of the company.¹²

[42] We adopt those factors, both of which Staff relies on in this case. We also note that a firm may have many officers, some of whom may share the responsibility for supervision, direction, and operation of an activity of the company. Accordingly, an individual who exercises meaningful supervision or direction over the firm's activities may be found to be acting as an officer, even though other individuals bear those formal responsibilities, or even though other individuals also exercise supervision or direction. As a result, a number of officers can simultaneously be an integral part of the mind and management of the company.

¹⁰ 2006 ONSEC 15.

¹¹ *Momentas* at para 101, citing *Re World Stock Exchange* (2000), 9 ASCS 658 at 18.

¹² *Momentas* at para 102.

3. Evidence

[43] In support of its position that Mr. Bouji has acted as an officer or director of Global RESP following his removal as CEO and UDP, Staff relies primarily on evidence from M.M., a former employee at Global RESP, and from Ms. Bouji herself.

(a) M.M.

[44] The record before the Director included the transcript of CRR Staff's interview of M.M., conducted in December 2016. In this proceeding, Staff filed an affidavit from M.M. to supplement that transcript. In addition, M.M. was cross-examined at this hearing by counsel for the Applicants.

[45] Mr. Bouji's administrative assistant found M.M.'s résumé on the internet in March 2015. Mr. Bouji interviewed her that same month. However, M.M. advised Mr. Bouji that she was not interested in the position when she learned that it was not salary-based but commission-based.

[46] In June 2015, Mr. Bouji's administrative assistant contacted M.M. about a salary-based position. M.M. attended a second interview with Mr. Bouji, and expressed an interest in being a branch manager. Mr. Bouji promised her such a position after she completed her training and licencing to be both a dealing representative and a branch manager. In M.M.'s presence, Mr. Bouji advised another Global RESP employee that M.M. would be joining the company, and directed that employee to complete the necessary paperwork.

[47] M.M. began work at Global RESP in late July 2015 and was registered as a dealing representative in August 2015. She became a branch manager in October 2015, following which she provided compliance reports to Global RESP's Chief Compliance Officer (**CCO**) and sales reports to Mr. Bouji.

[48] In October of 2016, Global RESP terminated her employment, advising her that this was due to a "shortage of work." M.M. contends that she was fired because she made an internal report about the improper conduct of an employee. As of the date of this hearing, M.M. and Global RESP are engaged in litigation.

[49] M.M. states that Mr. Bouji "actually directed the day-to-day affairs of Global RESP." She says that Mr. Bouji "would reprimand sales managers for failing to meet their sales targets" and would, on a daily basis, "walk the halls ... to monitor the work carried out by Global RESP employees." M.M. states her understanding that Global RESP's CCO "reported to Mr. Bouji on a daily basis."

[50] Having reviewed M.M.'s evidence, we now turn to an assessment of the reliability of that evidence.

[51] To the extent that M.M. testified about her direct interactions with Mr. Bouji regarding her negotiation with him with respect to joining Global RESP, her evidence was unimpeached and we accept it.

[52] The Applicants submit that on the other hand, we ought to give less weight to M.M.'s evidence about Mr. Bouji's overall role at Global RESP, for two reasons:

- a. M.M. gave inconsistent answers about the dates and sequence of the events that took place in late September and early October 2016 (including her reporting of an employee's misconduct and her nearly contemporaneous application for employment at another firm); and

b. M.M.'s dispute with Global RESP about the circumstances of her termination.

[53] M.M. acknowledged that she did not have a precise recollection of the specific dates and sequence of events. In particular, M.M. was uncertain as to whether some events happened during one week in October 2016 or during the following week.

[54] We were not asked to conclude, and we do not conclude, that M.M.'s minor errors and uncertainty about the sequence and dates reflect any attempt by her to be deceitful. Further, neither the sequence of events in October 2016 nor the dates on which the events happened are relevant to any matter in issue in this proceeding.

[55] As for her observations about Mr. Bouji's involvement in Global RESP more generally, we do not attach significant weight to that evidence. The fact that she is engaged in litigation with Global RESP warrants the caution that Applicants' counsel urges us to apply, and her limited interactions with Mr. Bouji make her evidence on this topic less reliable, even if her beliefs are honestly held.

(b) Ms. Bouji

[56] In March 2017, CRR Staff conducted an examination of Ms. Bouji in connection with the Amended Registration Application. The transcript of that examination formed part of the record before the Director and in this proceeding. In addition, in the hearing before us, the Applicants filed an affidavit from Ms. Bouji in response to M.M.'s affidavit, and Ms. Bouji was cross-examined by Staff.

[57] In the March 2017 examination, Staff asked Ms. Bouji, "What is your father's role at Global RESP Corp.?" Ms. Bouji answered, "He's in charge of sales and recruiting" (emphasis added). Ms. Bouji alluded to the fact that Mr. Bouji works with sales management to meet sales objectives, sets sales targets, and is involved with the hiring and terminating of sales managers. Ms. Bouji also confirmed that Mr. Bouji sometimes attends and participates in executive and board meetings, usually in relation to his sales activities.

[58] Ms. Bouji maintains that: (i) Mr. Bouji is not present in those meetings between Global RESP's CEO and UDP and Global RESP's CCO that discuss compliance-related functions of that entity; and (ii) his meetings with Global RESP's CCO pertain only to sales-related matters, and not to compliance-related matters.

[59] At the hearing, Ms. Bouji testified that Global RESP's most senior sales employees, the vice-presidents of sales (there were two such individuals prior to March 2017 and there is one currently), report to Mr. Bouji regarding sales and sales targets. Further, Mr. Bouji is involved in the hiring and termination of individuals for that position.

4. Analysis

[60] As noted above, Staff submits that it is not necessary for us to find that Mr. Bouji has acted in breach of the 2014 Order.

[61] We are mindful of the fact that Mr. Bouji is not a party to the application before us, and that therefore he was not present to challenge any evidence that might implicate him. However, our findings here do not bind him personally, and Staff has undertaken, in writing:

not [to] take the position in any subsequent proceedings against Mr. Bouji, Global RESP and/or GGAI alleging a breach of the 2014 Order that findings made by this panel regarding compliance with the 2014 Order are binding on Mr. Bouji, Global RESP and/or GGAI in any subsequent proceeding brought against them.¹³ [emphasis in the original]

- [62] It is with those circumstances in mind that we engage in an assessment of Mr. Bouji's conduct, as we are required to do in order to reach a conclusion about Ms. Bouji's response, or lack of response, to the 2014 Settlement.
- [63] The evidence before us establishes that since his removal as CEO and UDP, Mr. Bouji has been in charge of sales, and has therefore exercised meaningful supervision and direction over sales. Because Global RESP's function is to distribute Plan units, sales is one of its core activities, if not its primary core activity.
- [64] In addition, Mr. Bouji attends and participates in executive and board meetings of Global RESP to discuss sales-related matters. He attends these meetings not only as the person at Global RESP to whom members of sales management report, but also as its sole owner.
- [65] Although Mr. Bouji has no formal role in the organization, there is no evidence to suggest that his sales management activities have been managed, monitored, or restricted.

5. Conclusion as to Mr. Bouji's activities

- [66] We find that because he is in charge of sales, a core activity of Global RESP, Mr. Bouji exercises meaningful supervision and direction of that Firm. We further find that because he is in charge of recruiting for sales positions, and even for positions that have a combined sales and compliance function (such as Branch Manager), Mr. Bouji regularly negotiates terms of employment on behalf of Global RESP, as he did when M.M. was hired.
- [67] For those reasons, we conclude on a balance of probabilities that Mr. Bouji is, to use words quoted by the Commission in *Momentas*, "an integral part of the mind and management"¹⁴ of Global RESP. Mr. Bouji has acted, and continues to act, as an officer of Global RESP, and he has therefore contravened the 2014 Order on an ongoing basis.
- [68] Having concluded that Mr. Bouji contravened the 2014 Order, we wish to address the meaning, and relevance to this application, of the words "it appears" in subsection 27(1) of the Act. Those words are in the overall test in this case, *i.e.*, whether it appears, today, that the registration is objectionable. Does that mean that those words apply equally to constituent elements of that overall question? For example, the question of whether Mr. Bouji contravened the 2014 Order is a sub-issue, or a piece of the overall question. Because the words "it appears" apply to the overall question, do they also apply to the sub-issue about Mr. Bouji's conduct in light of the 2014 Order?

¹³ Supplementary submissions of Staff, contained in an undated letter from Staff counsel to the Commission's Registrar for the attention of this Panel, delivered August 28, 2017.

¹⁴ *Momentas* at para 101.

[69] The answer is not clear, and the point was not fully argued at the hearing. However, given our conclusion that Mr. Bouji did contravene that order, we need not resolve the question. We decline to engage in that analysis.

[70] Further, as noted above, Staff did not press the argument as to whether it appears that Mr. Bouji has acted as a director (as opposed to an officer) of Global RESP, and we make no finding in that regard.

E. Does Ms. Bouji’s role as chair during the relevant time mean that her proposed registration as UDP appears to be “otherwise objectionable”?

1. Introduction

[71] As the title implies, a firm’s UDP is the person who is ultimately responsible for overseeing the activities of the registrant and for taking all reasonable steps to promote the registrant’s compliance with Ontario securities law.

[72] Section 11.2 of NI 31-103 requires a registered firm to designate a registered individual as the UDP. Section 5.1 of NI 31-103 sets out the responsibilities of a UDP, requiring that she/he: (i) “supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm’s behalf”; and (ii) “promote compliance by the firm, and individuals acting on its behalf, with securities legislation.”

[73] The Commission has emphasized that the UDP is responsible for promoting a culture of compliance and overseeing the effectiveness of a firm’s compliance system. Specifically, in *Re Argosy Securities Inc. (Argosy)*,¹⁵ the Commission stated:

The role of UDP is critically important. The UDP bears ultimate responsibility for establishing, maintaining and promoting a culture of compliance and ethical behaviour within the firm. ... This responsibility can and must be discharged in a number of ways, including by ensuring an appropriate “tone from the top”, a tone that the UDP must also satisfy himself/herself is being promulgated throughout the firm by other members of management. This latter obligation is often referred to as “tone from the middle”, and is a necessary complement to the tone from the top.¹⁶

[74] The UDP is also often the CEO of the registered dealer. The UDP is responsible for fostering a culture of compliance, and the tone from the top has a profound influence on how a firm conducts its business and is managed. The Commission has emphasized that the failure of a UDP to fulfill this responsibility of maintaining a culture of compliance is a serious matter. As explained by the Commission in *Argosy*:

The seriousness of Mr. [S]’s failure as UDP is compounded by the fact that he was not only the UDP of both firms, but also the firms’ CEO and chair of the board of directors. Holders of both those positions bear responsibility for

¹⁵ 2016 ONSEC 11.

¹⁶ *Argosy* at para 171.

ensuring that the firm adopt and implement appropriate policies, procedures and practices, and for empowering and enabling the UDP to discharge his/her critical compliance-related obligations.¹⁷

2. Analysis

- [75] The 2014 Settlement included admissions by Mr. Bouji and Global RESP that they had engaged in serious misconduct. Ms. Bouji was aware of this misconduct and the resulting 2014 Order. The order imposed significant sanctions that required (and continue to require) concerted efforts by the respondents to that proceeding to avoid further contraventions of Ontario securities law. In particular, the explicit prohibition against Mr. Bouji acting as an officer or director of Global RESP imposed an obligation on the firm's board to ensure that the firm did not allow Mr. Bouji to act as an officer or director.
- [76] We have no evidence that Ms. Bouji, as chair of Global RESP, took any meaningful steps in that regard. In her March 2017 examination, CRR Staff asked her whether the firm had put in place any policies or procedures to guard against Mr. Bouji engaging in impermissible activities. Ms. Bouji confirmed that there were none.
- [77] At the hearing before us, Staff asked Ms. Bouji the same question. She simply answered, "No." She neither explained nor qualified that response. We find her answer to be surprising, and her inaction to be unacceptable, especially given:
- a. Mr. Bouji's history of non-compliance, as well as that of the Firms while he was UDP, all of which contribute to a greater likelihood of future non-compliance;
 - b. that Staff had asked a similar question of Global RESP's in-house counsel by email in November 2015; and
 - c. the further opportunity that Global RESP had to put policies or procedures in place in the five months that elapsed since Ms. Bouji was asked that very question at her March 2017 examination.
- [78] The Applicants provided letters by the two independent directors of the Firms in support of the proposed amendment of Ms. Bouji's registration. In addition, the Applicants filed an affidavit from the current CEO and UDP of the Firms, in which he stated that Ms. Bouji "is very capable and qualified" and that he "highly recommend[s] her for the role of CEO and UDP of Global RESP." These statements of support, however, include nothing to suggest that Ms. Bouji, in her role as the Firms' chair, has taken, initiated, or directed any specific efforts to ensure Mr. Bouji's compliance with the 2014 Order.
- [79] The Applicants had ample opportunity, but failed, to adequately address the only reasonable inference that can be drawn from the evidence available to us; namely, that Ms. Bouji is either unable or unwilling to take the necessary steps to limit Mr. Bouji's involvement to that permitted by the 2014 Order or that she does not understand the seriousness of the prior sanctions and/or the obligations associated with being the chair.

¹⁷ *Argosy* at para 176.

3. Conclusion as to the implications of Ms. Bouji's role as chair

[80] The Applicants submit that it would be improper for this Panel to find that Ms. Bouji's proposed registration as UDP is objectionable based on the conduct of another individual, *i.e.*, Mr. Bouji. However, our concern as to whether Ms. Bouji meets the high standards of fitness and business conduct referred to in paragraph [36] above is based on Ms. Bouji's failure to fulfill her obligations as Chair of Global RESP to ensure compliance with the 2014 Order, especially in light of Mr. Bouji's and Global RESP's history of non-compliance. In our view, Staff has demonstrated that Ms. Bouji does not attain the necessary high standards, and we therefore conclude that Ms. Bouji's proposed amended registration appears to be objectionable.

F. To what extent, if any, does Ms. Bouji's lack of independence from Mr. Bouji make her proposed registration as UDP appear to be "otherwise objectionable"?

[81] As noted above, Staff has previously taken the position that any new UDP would have to be independent, as that term is defined in the 2014 Order. However, at the hearing of the motion referred to in paragraph [22] above and at the hearing of the Review Application, Staff acknowledged that the 2014 Order imposes no such requirement.

[82] While Staff no longer takes its initial position, Staff submits before us that in all of the circumstances, Ms. Bouji's lack of independence ought to be disqualifying. Staff maintains that this would be the appropriate conclusion for any proposed UDP who is not independent and that the requested conclusion in this case is not related in any way to characteristics specific to Ms. Bouji, apart from her lack of independence.

[83] We are not prepared to accept Staff's submission insofar as it extends beyond Ms. Bouji's particular disqualification. We accept that Ms. Bouji's lack of independence from Mr. Bouji may explain her apparent failure to implement measures aimed at constraining Mr. Bouji. However, our finding as to her failure does not assist, one way or the other, as to whether any future UDP of the Firms need be independent of Mr. Bouji, as that term is defined in the 2014 Order.

G. Conclusion

[84] For the above reasons, we conclude that Mr. Bouji has acted, and continues to act, as an officer of Global RESP. The fact that he is in charge of sales, a core activity, and that he negotiates employment contracts on behalf of the firm, as he did with M.M., makes him an integral part of the mind and management of that company, and admits of no other reasonable conclusion.

[85] Ms. Bouji, who is chair of the board, confirms that Global RESP has not put in place any policies or procedures to limit Mr. Bouji's activities. Further, the Applicants adduced no evidence of any other steps taken (*e.g.*, meetings, memos, other staff communications) to ensure that Mr. Bouji and the Firms complied with this ongoing aspect of the 2014 Order. This inaction exists despite Staff's November 2015 inquiry about the issue, despite Ms. Bouji being asked by Staff about the issue during her March 2017 examination, and despite the impending hearing and review of the Director's decision.

- [86] In our view, the serious misconduct of Mr. Bouji and the Firms that gave rise to the 2014 Order, combined with the absence of measures to ensure that Mr. Bouji did not act as an officer or director, increased the risk of harm to investors. Mr. Bouji's own failure, when he was UDP, to ensure that the Firms were compliant demonstrates a lack of diligence with respect to regulatory requirements. In light of these considerations, and on the facts of this case, the Firms and Ms. Bouji had an obligation to see that meaningful steps were taken to minimize the risk of further contraventions.
- [87] Ms. Bouji's unwillingness or inability to take such steps, viewed in light of the circumstances set out in paragraphs [85] and [86] above, lead us to agree with Staff's submission that her registration in the critical role of UDP would run counter to the Commission's mandate to protect investors.
- [88] We therefore conclude that an amendment to Ms. Bouji's registration to permit her to be the UDP of the Firms appears to be objectionable.

V. RESULT

- [89] For the reasons set out above, the Amended Registration Application submitted by Ms. Bouji and the Firms is refused.

Dated at Toronto this 24th day of October, 2017.

"Timothy Moseley"
Timothy Moseley

"Deborah Leckman"
Deborah Leckman

"William J. Furlong"
William J. Furlong