



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
FIRESTAR CAPITAL MANAGEMENT CORP., KAMPOSSE FINANCIAL CORP.,
FIRESTAR INVESTMENT MANAGEMENT GROUP INC., MICHAEL CIAVARELLA
AND MICHAEL MITTON**

**SETTLEMENT AGREEMENT
BETWEEN STAFF AND MICHAEL CIAVARELLA**

**SETTLEMENT AGREEMENT BETWEEN
MICHAEL CIAVARELLA and
STAFF OF THE ONTARIO SECURITIES COMMISSION**

I. INTRODUCTION

1. By Notice of Hearing dated May 16, 2011, the Commission announced that it proposed to hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5 (the “*Act*”), it is in the public interest for the Commission to make an order approving the settlement agreement entered into between Staff of the Commission and the Respondent Michael Ciavarella (the “Respondent”).

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Act*, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of the Respondent.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated December 21, 2004 against Respondent (the “Proceeding”) in accordance with the terms and conditions set out below. The Respondent consents to the making of an order in the form attached as Schedule “A”, based on the facts set out below. The facts giving rise to the proceedings occurred from approximately July of 2004 until December of 2004 (the “Material Time”).

PART III - AGREED FACTS

(a) Background

4. The Respondent is an individual who resides in the Province of Ontario.

5. Michael Mitton (“Mitton”) is an individual who resides in British Columbia and/or Ontario. Prior to this matter, Mitton had been convicted of at least 103 counts of fraud, many of which have involved securities fraud. He is currently subject to a 20 year cease trade order in British Columbia.

6. Kamposse Financial Corp. (“Kamposse”) was a corporation incorporated in Ontario with its head office in Richmond Hill, Ontario.

7. Firestar Investment Management Group Inc. (“Firestar Investment”) was a corporation incorporated in Ontario with its head office in Sudbury, Ontario. At the Material Time, the Respondent (“Ciavarella”) was the President and a Director of Firestar Investment.

8. Firestar Capital Management Corp. (“Firestar Capital”) was a corporation incorporated in Ontario with its head office in Toronto, Ontario. Ciavarella was President, Secretary and a Director of Firestar Capital.

9. At the material time, Pender International Inc. (“Pender”) was a company incorporated in the State of Delaware with its head office in Thornhill, Ontario. Pender traded on the National Association of Securities Dealers Over the Counter Bulletin Board in New York.

10. During the Material Time, the Respondent was an insider of Pender as that term is defined in the Securities and Exchange Act 1934 of the United States of America.

11. Pender had a similar address and phone number as Kamposse.

12. Armistice Resources Ltd. (“Armistice”) was a corporation incorporated in Ontario with its head office in Kirkland Lake, Ontario.

13. In July of 2004, Pender announced that it had completed a private placement of US\$1.6 million at US \$0.50 per share. By press release dated October 27, 2004, Pender announced that those funds were used to acquire IMM Investments Inc. (“IMM”), a private company, which became a wholly owned subsidiary of Pender. The press release indicated that IMM owned approximately 30% of Armistice with rights to purchase up to 55%.

14. Pender acquired IMM from KJ Holding Inc. (“KJ Holding”), an Ontario corporation. As a result of the acquisition, KJ Holding acquired 36.5% of Pender’s issued and outstanding common stock. KJ Holding is wholly owned by Kalano Jang, the father of Kalson Jang, who was a director of Pender.

15. The only asset of Armistice and Pender was a mine in northern Ontario near Kirkland Lake. At that time, the National Instrument 43-101 geological report for Armistice indicated a mineable resource of gold on the property; however, the mine was flooded with water. The financial statements of Armistice for the three month period ending September 30, 2004 reveal a deficit of \$29,598,630.

16. By press release dated October 27, 2004, Pender announced that dewatering the mine would take 6-8 weeks, and that production was targeted in early 2005. By press release dated October 28, 2004, Pender announced that it would be engaging Atlas Dewatering to dewater the mine, and it was expected that the dewatering would be completed in 4-6 weeks.

17. Although Atlas prepared to commence dewatering operations, Pender did not release any further information during the Material Time about efforts to dewater the mine.

18. The only other substantive press release during the period June to November 2004 was the announcement that Pender, on October 25, 2004, had appointed the Respondent as President and Director of Pender, and had appointed a new Board of Directors.

(b) The Accounts

19. Firestar Capital maintained accounts at HSBC Securities (Canada) Inc. (“HSBC Securities”) and HSBC Bank Canada (“HSBC Bank”). The Respondent was the only person authorized to trade on the Firestar Capital account at HSBC Securities. The Respondent was the only principal of the Firestar Capital account at HSBC Bank and Kalson Jang also had signing authorization over the account.

20. The Respondent maintained accounts in his own name at HSBC Securities, Desjardins Securities Inc. (“Desjardins”) and TD Waterhouse Canada Inc. (“TD Waterhouse”).

21. Kamposse maintained accounts at HSBC Bank, RBC Dominion Securities Inc. (“RBC DS”) and CIBC World Markets. The Respondent referred Kamposse to RBC DS. Karen Lam and Gwen Jang are the principals of the Kamposse account at HSBC Bank. Karen Lam and Gwen Jang had trading authority over the Kamposse account at RBC DS. Karen Lam and Gwen Jang had trading authority over the account at CIBC World Markets.

22. All of the above accounts (which will be referred to collectively as the “Accounts”) are related to each other and/or related to insiders of Pender.

(c) Trading in Pender

23. In July of 2004, Pender was quoted at approximately US \$0.08 per share. Prior to October 14, 2004, there had been no active market for Pender shares. On October 14, 2004, the shares opened at US \$0.30 and closed at the same price on a volume of 12,000 shares traded. Over the next 35 trading days, the shares traded as high as US \$11.35 on a volume of over 2 million shares trading. This represents an increase in price of the shares of Pender of approximately 3,783%.

24. During the Material Time, none of the news releases issued by Pender were intended to cause the dramatic increase in the price and volume of Pender shares traded. Even if the news releases did have a marginal effect on the price, Pender did not release any news after October 28, 2004.

25. The increase in the share price of Pender was artificial and was caused by trading that was arranged between the Accounts and orchestrated by Mitton.

26. This was achieved by Mitton and others (not including Ciavarella) conspiring to acquire all or almost all of the free-trading shares of Pender which would then enable them to trade those shares in a circular pattern at ever increasing volume and prices. This type of trading activity to manipulate the price of a stock, known as a “pump and dump”, artificially inflated the price of Pender shares with the intention of defrauding unsuspecting investors.

27. In the summer of 2004, Mitton orchestrated the purchase of shares of Pender by Kalano Jang and others through a complex series of transactions using funds from private investors.

28. Kalano Jang used about \$900,000 to purchase almost all of the then outstanding shares of Pender and IMM used approximately \$2,000,000 to purchase a 14.4% interest in Armistice. IMM and its interest in Armistice were subsequently vended to Pender in exchange for Pender shares.

29. As a result, Kalano Jang and others acquired control over almost all of the free-trading shares in Pender, Pender acquired a 14.4 % interest in Armistice and the private investors acquired shares in Pender.

30. In the middle of October of 2004, having acquired almost all of the free-trading shares of Pender, Mitton and his associates (not including the Respondent) orchestrated the trading in Pender shares thus manipulating the share price of Pender.

31. This circular trading in Pender shares was conducted by Mitton using certain of the Accounts over which the Respondent had legal authority or through other accounts held by

nominee account holders whom Mitton directed or controlled. The Respondent was negligent in failing to adequately monitor his accounts.

32. The trading was conducted by Mitton at ever increasing prices and volumes in order to artificially inflate the Pender share price and distorted the normal market forces as they related to the trading of Pender shares.

33. Given Mitton's notoriety, none of the Accounts were in the name of Mitton.

34. In trading the Pender shares, Mitton engaged in various sophisticated tactics which were indicative of a stock manipulation scheme using certain of the Accounts controlled by the Respondent and the Respondent failed to adequately monitor these accounts.

35. Over the following weeks, the price of Pender shares rose from \$0.30 U.S. per share to approximately \$11.35 U.S. per share on November 18, 2004.

36. Given concerns regarding the Accounts, the brokerage firms where the Accounts were located commenced internal investigations and discovered that the principal purchases of the Pender shares were also the principal sellers. As a result, these brokerages froze the accounts held by the Respondent and others on suspicion that the share price of Pender had been manipulated.

37. In November of 2004, the HSBC Bank had an outstanding debt of about U.S. \$2,600,000 due to the unauthorized purchase of Pender shares in the Respondent's accounts that had not been settled. This debt was never settled and as a result, the HSBC Bank incurred a loss of over U.S. \$2,625,000. It has subsequently obtained a default judgment against the Respondent for its losses.

38. The Respondent, through trades executed through his accounts by Mitton and his associates at HSBC and elsewhere, became the paper buyer of large amounts of Pender securities as a result of this stock manipulation scheme.

39. On or about November 18, 2004, the Accounts largely stopped trading shares of Pender. When the Accounts stopped trading the shares of Pender, the share price of Pender dropped dramatically, causing losses to investors.

40. By the end of December 2004, the price had dropped to U.S. \$6.00 and by the end of February 2005 the share price had fallen to U.S. \$0.34.

41. On December 10, 2004, the Commission issued directions freezing certain accounts and issued temporary cease trade orders preventing the Respondent, Mitton and others from trading shares of Pender. Pursuant to an order made under the *Criminal Code of Canada*, the Respondent has been prohibited from trading in all securities since September 26, 2006

42. Although all of the Accounts traded and/or funded the purchase of Pender stock, the main purchasing account was the Firestar Capital account at HSBC Securities and the main selling account was the Kamposse account at RBC DS. Funds from Kamposse were transferred to the Firestar Capital account at HSBC Securities.

43. As at September 30, 2004, the Kamposse account at RBC DS contained 318,000 shares of Pender with a market value of Can \$26,087.61. During October and November of 2004, those shares were sold and total funds of US \$953,378 and Can \$1,603,000 were withdrawn from the account.

44. In November of 2004, the Firestar Capital account at HSBC Securities purchased 392,000 shares of Pender, of which it sold 17,500, at a net cost of US \$3,557,343.37. It also deposited 200,000 shares of Pender into the same account. Four cheques totaling US \$2,324,000 that were deposited to the Firestar Capital account at HSBC Securities were subsequently returned unpaid. As at November 30, 2004, the Firestar Capital US dollar account at HSBC was in a debit position of US \$2,822,700.75, which was offset by a credit position in the Firestar Capital CDN dollar account of \$293,590.

(d) The Involvement of the Respondent

45. The Respondent was negligent in the monitoring of the securities trading accounts he controlled. His lack of diligence allowed the Firestar account at HSBC to be used by Mitton as one of the main accounts used to manipulate the share price of Pender securities, a company of which the Respondent was the directing mind.

46. The Respondent, Firestar Investment and Firestar Capital are subject to a default judgment of the Superior Court of Ontario obtained by HSBC in the amount of \$3.2 million. An appeal of this judgment was rejected by the Ontario Court of Appeal and leave to appeal to the Supreme Court of Canada was denied.

IV. CONDUCT CONTRARY TO THE PUBLIC INTEREST

47. The Respondent's failure to adequately monitor his accounts was contrary to the public interest in that during the material time, trading in the shares of Pender was dominated by trading that was orchestrated by Mitton and others (not including the Respondent) in part through accounts controlled by the Respondent. This trading was arranged between the Accounts by Mitton in a way that created a misleading appearance of trading activity and artificially increased the share price of Pender.

48. The Respondent admits and acknowledges that his failure to monitor trading in his account was contrary to the public interest.

IV. FACTS IN MITIGATION

49. By virtue of Section 127 orders issued by the Commission on December 10, 2004, the Respondent has been prohibited from trading in securities Pender since that date. By virtue of an order made under the *Criminal Code of Canada*, the Respondent has been prohibited from trading in any securities since September 26, 2010.

V. TERMS OF SETTLEMENT

50. The Respondent agrees to the following terms of settlement, to be set out in an order by the Commission pursuant to s. 127(1) of the Act, as follows:

(a) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by the Respondent cease for a period of 5 years from the date of the approval of this Settlement Agreement, with the following exceptions:

(i) that the Respondent is permitted to trade in securities in mutual funds through a registered dealer for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)); and

(ii) that the Respondent is permitted to trade shares in a “private company” as defined in section 1 of the Act;

(b) pursuant to clause 2.1 of section 127(1) of the Act, the Respondent is prohibited for a period of 5 years from the date of the approval of this Settlement Agreement from the acquisition of any securities, with the following exceptions:

(i) the Respondent is permitted to acquire securities in mutual funds through a registered dealer for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)); and

(ii) that the Respondent is permitted to acquire shares in a “private company” as defined in section 1 of the Act;

(c) pursuant to clause 3 of subsection 127(1) that any exemptions contained in Ontario securities law do not apply to the Respondent for a period of 5 years from the date of the approval of this Settlement Agreement;

(d) pursuant to clause 6 of subsection 127(1) of the Act, the Respondent is reprimanded;

(e) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) that the Respondent resign any position he may hold as an officer or director of any public corporation, private corporation, registrant or investment fund manager;

(f) pursuant to clauses 8 and 8.4 of subsection 127(1) that the Respondent be prohibited from becoming or acting as a director or officer of any Canadian public corporation, reporting issuer or investment fund manager a period of 5 years from the date of the approval of this Settlement Agreement;

(g) pursuant to clause 8.5 of subsection 127(1) that the Respondent be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 5 years from the date of the approval of this Settlement Agreement; and

(h) with the consent of the Respondent, the Respondent will make a payment to the Commission of the sum of \$100,000 by no later than June 30, 2011 to be distributed as though it were a payment made pursuant to section 3.4(2)(b).

PART VI - STAFF COMMITMENT

51. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against the Respondent in relation to the facts set out in Part III herein, subject to the provisions of paragraph 52 below.

52. If this Settlement Agreement is approved by the Commission, and at any subsequent time the Respondent fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against the Respondent based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

53. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and the Respondent for the scheduling of the hearing to consider the Settlement Agreement.

54. Staff and the Respondent agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding the Respondent's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

55. If this Settlement Agreement is approved by the Commission, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

56. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

57. Whether or not this Settlement Agreement is approved by the Commission, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

58. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and the Respondent leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and the Respondent ; and
- (b) Staff and the Respondent shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

59. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of the Respondent and Staff or as may be required by law.

PART IX. - EXECUTION OF SETTLEMENT AGREEMENT

60. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement

61. A facsimile copy of any signature will be as effective as an original signature.

Dated this 17th day of May, 2011.

Signed in the presence of:

“S. Hutchison”

“Michael Ciavarella”

Witness:

Michael Ciavarella

Dated this 17th day of May, 2011

“Tom Atkinson”

Tom Atkinson

Director, Enforcement Branch

Schedule A

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

AND

MICHAEL CIAVARELLA

ORDER
(Section 127(1))

WHEREAS on December 21, 2004 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") in respect of Michael Ciavarella (the "Respondent");

AND WHEREAS the Respondent entered into a Settlement Agreement with Staff of the Commission dated May 17, 2011 (the "Settlement Agreement") in which the Respondent agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for the Respondent and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by the Respondent cease for a period of 5 years from the date of the approval of this Settlement Agreement, with the following exceptions;

(i) the Respondent is permitted to trade securities in mutual funds through a registered dealer for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)); and

(ii) that the Respondent is permitted to trade shares in a “private company” as defined in section 1 of the Act;

(c) pursuant to clause 2.1 of section 127(1) of the Act, the Respondent is prohibited for a period of 5 years from the date of the approval of this Settlement Agreement from the acquisition of any securities, with the following exceptions:

(i) the Respondent is permitted to acquire securities in mutual funds through a registered dealer for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)); and

(ii) that the Respondent is permitted to acquire shares in a “private company” as defined in section 1 of the Act;

(d) pursuant to clause 3 of subsection 127(1) that any exemptions contained in Ontario securities law do not apply to the Respondent for a period of 5 years from the date of the approval of this Settlement Agreement;

(e) pursuant to clause 6 of subsection 127(1) of the Act, the Respondent is reprimanded;

(f) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) that the Respondent resign any position he may hold as an officer or director of any public corporation, private corporation, registrant or investment fund manager;

(g) pursuant to clauses 8 and 8.4 of subsection 127(1) that the Respondent be prohibited from becoming or acting as a director or officer of any Canadian public corporation, reporting issuer or investment fund manager for a period of 5 years from the date of the approval of this Settlement Agreement;

- (h) pursuant to clause 8.5 of subsection 127(1) that the Respondent be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 5 years from the date of the approval of this Settlement Agreement; and
- (i) with the consent of the Respondent, the Respondent will make a payment to the Commission of the sum of \$100,000 by no later than June 30, 2011 to be distributed as though it were a payment made pursuant to section 3.4(2)(b).

DATED AT TORONTO this day of , 2011.