



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
POWERWATER SYSTEMS, INC., DUNCAN CLEWORTH and
POWERWATER USA LTD.**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) allege:

I. OVERVIEW

1. Powerwater Systems Inc., (“PSI”), Duncan Cleworth (“Cleworth”) and Powerwater USA Ltd. (“PUL”) (together, the “Respondents”) are subject to an order made by the Banking Commissioner of the Connecticut Department of Banking, State of Connecticut (“CDB”) dated October 21, 2013 (the “CDB Order”) that imposes sanctions, conditions, restrictions or requirements on them.
2. In its Findings of Fact, Conclusions of Law and Order dated October 21, 2013 (the “CDB Findings”), the CDB found that PSI and Cleworth engaged in the offering and selling of unregistered securities, and that PUL materially aided them in doing so. The CDB further found that the Respondents’ conduct constituted a fraud, and that Cleworth engaged in activities related to the purchase or sale of securities while unregistered to do so.

3. Staff are seeking an inter-jurisdictional enforcement order reciprocating the CDB Order, pursuant to paragraph 4 of subsection 127(10) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”).
4. The conduct for which the Respondents were sanctioned took place from September 17, 2004 to on or about January 11, 2013 (the “Material Time”).
5. During the Material Time, PSI was an issuer of common stock. Cleworth, individually and jointly with PUL, offered and sold PSI securities from Connecticut to investors. At Cleworth’s direction, investors deposited payments into a bank account controlled by Cleworth. Cleworth subsequently withdrew and used a portion of the investor funds for his personal use.
6. PSI is an Ontario corporation, whose securities were never registered, or exempt from registration, in Connecticut under the *Connecticut Uniform Securities Act* (the “Connecticut Act”).
7. PUL is a Connecticut corporation, which has never been registered in any capacity under the Connecticut Act.
8. Cleworth is an Ontario resident, who has never been registered in any capacity under the Connecticut Act. Cleworth was the president of PUL, and the president and chief executive officer of PSI.

II. THE CDB PROCEEDINGS

9. On January 11, 2013, the CDB issued an Order to Cease and Desist, Notice of Intent to Fine and Notice of Right to Hearing (“Notice”) against the Respondents.
10. On June 26, 2013 the matter was ultimately heard at a hearing before the CDB, following a previous adjournment requested by the Respondents through their counsel. The Respondents failed to appear at the hearing. As a result, pursuant to Section 36a-1-31(b) of the Connecticut Act, the allegations against the Respondents contained within the Notice were deemed admitted.

The CDB Findings

11. The CDB found the following:
 - a. pursuant to 36a-1-31(b) of the Connecticut Act, the allegations made in the Notice against Respondents are deemed admitted;
 - b. the Respondents offered and sold unregistered securities in or from Connecticut, in violation of Section 36b-16 of the Connecticut Act;
 - c. PUL materially aided PSI and Cleworth's violation of Section 36b-16 of the Connecticut Act;
 - d. the conduct of Respondents constitutes, in connection with the offer, sale or purchase of any security, directly or indirectly employing a device, scheme or artifice to defraud, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engaging in an act, practice or course of business which operates as a fraud or deceit upon any person, in violation of Section 36b-4(a) of the Connecticut Act;
 - e. Cleworth received compensation directly or indirectly related to the purchase or sale of securities and transacted business as an agent of issuer in this state absent registration, in violation of Section 36b-6(a) of the Connecticut Act; and
 - f. PSI employed Cleworth as an unregistered agent of issuer in Connecticut, in violation of Section 36b-6(b) of the Connecticut Act.

The CDB Order

12. The CDB Order imposed the following sanctions, conditions, restrictions or requirements pursuant to Section 36b-27(a) of the Connecticut Act:

- a. upon PSI:
 - i. that PSI cease and desist permanently from: (1) offering and selling unregistered securities; (2) in connection with the offer, sale or purchase of any security, directly or indirectly employing any device, scheme or artifice to defraud, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon any person; and (3) employing agents of issuer in [the State of Connecticut] absent registration;

- b. upon Cleworth:
 - i. that Cleworth cease and desist permanently from: (1) offering and selling unregistered securities; (2) in connection with the offer, sale or purchase of any security, directly or indirectly employing any device, scheme or artifice to defraud, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon any person; and (3) acting as an agent of issuer in [the State of Connecticut] absent registration;

- c. upon PUL:
 - i. that PUL cease and desist permanently from: (1) offering and selling unregistered securities; (2) in connection with the offer, sale or purchase of any security, directly or indirectly employing any

device, scheme or artifice to defraud, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon any person; and (3) materially aiding violations of the Connecticut Act, including without limitation Section 36b-16 of the Connecticut Act;

- d. pursuant to Section 36b-27(d) of the Connecticut Act, a fine of Two Hundred Twenty-Five Thousand Dollars (\$225,000) be imposed against PSI;
- e. pursuant to Section 36b-27(d) of the Connecticut Act, a fine of Two Hundred Twenty-Five Thousand Dollars (\$225,000) be imposed against Cleworth; and
- f. pursuant to Section 36b-27(d) of the Connecticut Act, a fine of Two Hundred Thousand Dollars (\$200,000) be imposed against PUL.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

- 13. The Respondents are subject to an order of the CDB imposing sanctions, conditions, restrictions or requirements on them.
- 14. Pursuant to paragraph 4 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements may form the basis for an order in the public interest made under subsection 127(1) of the Act.
- 15. Staff allege that it is in the public interest to make an order against the Respondents.
- 16. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

17. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the *Ontario Securities Commission Rules of Procedure*.

DATED at Toronto, this 14th day of May, 2014.