

Reasons: Decisions, Orders and Rulings

3.1 Reasons for Decision

3.1.1 Leslie Brown and Douglas Brown

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

AND

**IN THE MATTER OF
BRIAN ANDERSON, LESLIE BROWN, DOUGLAS
BROWN,
DAVID SLOAN AND FLAT ELECTRONIC DATA
INTERCHANGE
(a.k.a. F.E.D.I.)**

Hearing: April 26, 2004

Panel: H. Lorne Morphy, Q.C. - Commissioner
(Chair of the Panel)
Robert L. Shirriff, Q.C. - Commissioner

Counsel: Kathryn Daniels For the Staff of the
Ontario Securities
Commission

Douglas Brown - Unrepresented and
Present only to
observe

Leslie Brown - Unrepresented and
not present

Daniel Bernstein - For David Sloan
Derek J. Ferris - For Brian Anderson

DECISION AND REASONS REGARDING THE RESPONDENTS, LESLIE BROWN AND DOUGLAS BROWN

A. Background

1. In June 2003, a meeting was held in a hotel in Etobicoke at which about 17 persons attended.
2. At the outset of the meeting, the Respondent, Brian Anderson introduced himself as leading the meeting and then referred to certain other people, including the Browns, as being those who were part of the organization of the seminar.
3. Two of those present at the meeting were Brian Clarkin and another member of the Staff of the Commission. Clarkin, at the time of the hearing, was assistant manager, Investigations and in June 2003, at the time that he attended the seminar, he was a senior forensic accountant within the

Investigations unit. They attended the meeting using assumed names as a result of a call from the RCMP advising that a seminar was going to take place at the hotel at which securities were to be offered for sale to the public.

4. Following the introduction, Anderson offered to those present an investment opportunity in what he described as "a new exchange" which was called "the Flat Electronic Data Interchange or F.E.D.I. for short". One could invest in F.E.D.I. by acquiring "desks" or "seats" which were available at a price of U.S. \$125,000 per desk. Anderson indicated that there were only 20 desks of an original 300 available for sale as the others had already been sold. Anderson also indicated that if an investor did not have or want to invest a full U.S. \$125,000, he could pool the funds with other investors to purchase a single desk.
5. Anderson further advised those at the seminar that F.E.D.I. was a scriptural-based public trust which was being funded by contributions made by major Arab families. There were three elements of the business that F.E.D.I. was involved in. One was sales from Arab-initiated purchases of goods and services, the second was sales being generated from web cafes and electronic debit cards and the third element had to do with project financing that was going to be made available to third world countries to create labour within those countries.
6. The attendees were told that if they chose to invest, it had to be done by June 7, 2003 – within 3 days after the meeting.
7. The Respondent, Sloan, also participated in the meeting by explaining some of the documents relating to the mechanism for investing.
8. At one point in the meeting, Leslie Brown also spoke to the group. Clarkin testified "she stressed to the attendees the unique nature of the investment that was being offered to them and stressed again the fact that there was a need for immediate action if, in fact, anyone was going to invest."
9. When asked whether Mr. Brown participated in any way, Clarkin responded by stating "other than leading us or directing us to the appropriate room and being in the room and providing what would appear to be some administrative support, no, he did not have further involvement".

10. Sloan first met Anderson in the fall of 2000 at a seminar in the Bahamas. The following spring, Anderson told Sloan about F.E.D.I. and he invested in it.
11. In March 2003, Sloan who knew the Browns, introduced them to the concept of F.E.D.I. as an investment opportunity. This led to a meeting between the Browns and Anderson in the United States in April 2003 to discuss the F.E.D.I. investment opportunity. Following that meeting, Anderson sent to Sloan an e-mail thanking him for arranging the meeting with the Browns.
12. Sloan gave evidence that the meeting of June 4, 2003 came about as a result of the Browns inviting friends and colleagues to the meeting and asking Sloan if he could contact Anderson to "see if he would be able to come and conduct the meeting".
13. Sloan stated that the Browns were responsible for "constructing the invite list" and sending out the invitations.
14. When asked as to the involvement of the Browns at the June 4 meeting, Sloan confirmed the accuracy of Clarkin's testimony in that regard.

B. The Hearing

15. Leslie Brown, who is the wife of Douglas Brown, did not attend at the hearing nor was she represented.
16. Douglas Brown, while present at the hearing, advised that he was there only to observe and did not wish to testify or take any part in the hearing. He also was not represented.
17. Douglas Brown did admit that he and his wife had received notice of the hearing.
18. The only two witnesses called by Staff were Brian Clarkin and the Respondent, Sloan.
19. Staff counsel filed certificates pursuant to section 139 of the Act that the records of the Ontario Securities Commission disclosed that the Respondents, Leslie and Douglas Brown have not been registered under the *Securities Act*. Also, that Flat Electronic Data Interchange, also known as F.E.D.I. has never filed any documents with the Ontario Securities Commission that are required to be filed including never filing a prospectus or preliminary prospectus.

C. Statement of Allegations

20. In the Statement of Allegations, it is alleged that the Browns, together with the other Respondents, acted contrary to sections 25 and 53 of the *Securities Act* R.S.O. 1990, c.S.5 (the "Act").

21. In the Statement of Allegations:
 - (a) paragraph 5 states "on the evening of June 4, 2003, the individual Respondents conducted a presentation (the "Presentation") in respect of the Flat Electronic Data Interchange ("F.E.D.I.") at the Wyndham Bristol Place Hotel, Etobicoke;
 - (b) paragraph 6 lists the documents that were made available to persons attending the seminar; and
 - (c) paragraph 7 outlines what those attending the seminar were told concerning F.E.D.I. and investing in it.

No other conduct is alleged concerning the Browns or any of the other Respondents.

D. Submissions of Staff

22. Staff submitted that it was required to demonstrate that:
 - (a) the F.E.D.I. "desks" are securities under the Act;
 - (b) Leslie and Douglas Brown traded or committed acts in furtherance of a trade in respect of the F.E.D.I. desks;
 - (c) Leslie Brown and Douglas Brown were not registered under the *Securities Act* at the time they committed the trades or acts in furtherance of the trade;
 - (d) F.E.D.I. did not qualify for desks for sale in Ontario by obtaining a receipt for a prospectus.
23. Staff further submitted the following as constituting acts by the Browns in furtherance of trade:
 - (a) the Browns invited the attendees to the June 4, 2003 F.E.D.I. presentation;
 - (b) both Browns were part of the organizing group;
 - (c) Leslie Brown spoke at the meeting and urged attendees to note the unique opportunities afforded by the program.

E. Analysis

24. It should be noted, but for possibly the submission that the Browns were part of the organizing group, that none of the acts of the Browns which are submitted by Staff in its submissions as constituting acts in furtherance of trade are set out in the Statement of Allegations. This is troubling

in that it means we are being asked to find that the Browns acted contrary to the Act on three acts in furtherance of trade – two of which are not set out in the Statement of Allegations.

25. It is now well established that the rules of natural justice and procedural fairness necessitate that a respondent be given notice of the conduct that has been called into question and will be the subject matter of the hearing. To give such notice is a function of the Statement of Allegations.

26. But for our disposition of this matter, we would have required further submissions from Staff concerning the effect of this lack of notice in the Statement of Allegations of the specific acts, relied on by Staff in its submissions, as acts by the Browns in furtherance of a trade.

27. This is an unusual proceeding in that it was the Respondent Anderson, not the Browns, who was endeavouring to sell the desks of F.E.D.I. It is Staff's position that the acts of the Browns were acts in furtherance of the trade by Anderson of the F.E.D.I. desks.

28. In support of that position, Staff submits the words "any act in furtherance" as found in the definition of trade in the Act can be given a broad interpretation. See Securities Law and Practice (3rd), Borden Ladner Gervais, LLP, Carswell, 2004, definition of "Trade" at page 4.

29. Staff further refers to the Commission decision in *Re: Luccis & Company* – Broker Dealer, June, 1969 OSCB1 cited in support of the above commentary. That case involved a suspension of the broker-dealer registration of *Luccis & Company* for activities contrary to the securities laws. As part of its activities the respondent used a list of names supplied to it by a "local promoter". The report gives few details and does not indicate whether or not the promoter received consideration for supplying the list to the broker or whether there was any other arrangement between them with respect to the activities in question. The Commission stated:

"The person supplying the list of names is guilty of illegal trading, in view of the broad statutory definition of trading which includes, under section 1(u)(v) 'any act, advertisement, conduct in negotiation directly or indirectly in furtherance of any of the foregoing'. In other words, any act in furtherance of trading as the term is commonly understood, constitutes trading within the meaning of the *Securities Act*."

As the promoter was not a respondent in this hearing, the above statement is obiter.

30. Staff maintains arranging for the people to attend the meeting, as the Browns did, is equal to or

greater as an act in furtherance of trade than the provision of a list of names to a broker as in *Re Luccis*.

31. There is, however, a significant distinction. In *Re Luccis*, the local promoter supplied the list of names to the *Luccis & Company* for the purpose of furthering its improper trading activities. The Commission in its reasons, stated that it was common knowledge that similar lists were being sold to local promotional houses by persons in the United States to further or promote illegal trading in that country.

32. In this case, the Browns initiated the meeting and invited people to attend, not at the request of Anderson, but for what would appear to be in order that their friends could hear about F.E.D.I. as an investment opportunity. It was the Browns who initiated the idea of having a meeting for their friends and it was the Browns who asked Sloan to attempt to get Anderson to speak to them at that meeting.

33. In so doing, the Browns were not acting on behalf of or in furtherance of Anderson's trading activities. Consistent with this, Leslie Brown, when speaking at the meeting was not necessarily advocating to those present to buy the "desks" but rather stressed the "unique nature of the investment that was being offered to them" and "the fact that there was a need for immediate action if, in fact, anyone was going to invest".

34. For a person to act in furtherance of a sale or disposition of a security that is in fact being sold or disposed of by someone else, there must be at a minimum something done by that person for the purpose of furthering or promoting the sale or disposition of the security by the one engaged in that activity, in this case Anderson. The receipt of consideration or some other direct or indirect benefit, although not a necessary component, could be a strong indication of such a purpose. There is no evidence here to show that in arranging for the meeting and inviting their friends to attend, the Browns were doing so for such a purpose. Rather, it would appear the meeting was convened by the Browns simply in order for their friends to have an opportunity to become acquainted with F.E.D.I.

35. Accordingly, we find the Browns did not act contrary to sections 25 and 53 of the Act.

36. Having regard to this determination, it is not necessary for us to decide if the "desks" F.E.D.I. being offered for sale are securities as defined in the Act.

July 7, 2004.

"H. Lorne Morphy"

"Robert L. Shirriff"