



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
NORTH AMERICAN FINANCIAL GROUP INC., NORTH AMERICAN CAPITAL
INC., ALEXANDER FLAVIO ARCONTI AND LUIGINO ARCONTI**

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

Staff of the Ontario Securities Commission (the “Commission”) make the following allegations:

I. OVERVIEW

1. During the period July 2005 to September 2010, North American Financial Group Inc. (“NAFG”) raised funds by issuing non-prospectus qualified securities to investors. As at November 30, 2010, approximately 100 investors, many of whom were elderly, had over \$5.7 million invested in NAFG.
2. During the period July 2009 to April 2010, North American Capital Inc. (“NAC”) issued shares to approximately 11 investors. The total proceeds of approximately \$1,042,000 from the sale of NAC securities were transferred to NAFG.
3. NAFG is a finance company in the business of the acquisition and servicing of subprime car leases in respect of cars that were acquired through 970910 Ontario Inc. (operating as Prestige Motors) (“Prestige Motors”), a used car dealership. NAC was organized to finance car leases, which leasing was conducted through NAFG.

4. From at least September 2007 to September 2010, NAFG and/or NAC securities were sold by Carter Securities Inc. (“Carter”), a company incorporated in Ontario in February 2007. Carter’s registration as an Exempt Market Dealer (“EMD”) was suspended on September 22, 2010 by a decision of the Director, following an opportunity to be heard (“OTBH”) regarding its registration. The Director found that Carter was not suitable for registration, that it failed to comply with Ontario securities law and that Carter’s ongoing registration was objectionable (the “Director’s Decision”).

5. Alexander Flavio Arconti (“Flavio Arconti”) and Luigino Arconti (“Gino Arconti”) are brothers and were the directing minds of NAFG, NAC, Carter and Prestige Motors. Flavio Arconti and Gino Arconti were not named parties in the OTBH and the resulting Director’s Decision.

6. As officers and directors of Carter, Flavio Arconti and Gino Arconti authorized, permitted and/or acquiesced in Carter’s non-compliance with Ontario securities law as found by the Director and, thereby, did not comply with Ontario securities law.

7. Each of the Respondents also directly or indirectly engaged or participated in acts, practices or courses of conduct relating to NAFG and NAC securities that they knew or reasonably ought to have known perpetrated a fraud on persons contrary to the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the “Act”).

8. In addition, after the individual Respondents’ registration was automatically suspended under section 29(2) of the Act on September 22, 2010 as a result of Carter’s suspension (the “Automatic Suspension”), Gino Arconti continued to engage in and/or hold himself out as engaging in the business of trading in securities contrary to section 25(1) of the Act and contrary to the public interest.

II. THE RESPONDENTS

9. NAFG was incorporated in Ontario on July 30, 1996. NAFG is not a reporting issuer and is not registered under the Act.

10. NAC was incorporated in Ontario on November 25, 2008. NAC is not a reporting issuer and is not registered under the Act.

11. Flavio Arconti is a resident of Vaughan, Ontario and Gino Arconti is a resident of Richmond Hill, Ontario.

12. During the time of the conduct referred to herein, Flavio Arconti and Gino Arconti jointly owned NAFG, NAC, Carter and Prestige Motors and were the actual and/or *de facto* officers and directors of each of NAFG, NAC, Carter and Prestige Motors.

13. Flavio Arconti and Gino Arconti were registrants from September 17, 2007 to September 22, 2010.

14. In particular, beginning on September 17, 2007, when Carter was registered as a Limited Market Dealer, Flavio Arconti was registered as an Officer and Director (Trading Resident), Shareholder and Designated Compliance Officer of Carter and Gino Arconti was registered as an Officer and Director (Trading Resident) and Shareholder of Carter.

15. Following Carter's change in designation (by operation of law) to an EMD on September 28, 2009 until the Automatic Suspension, Flavio Arconti was registered as the Chief Compliance Officer, Ultimate Designated Person and Dealing Representative of Carter and Gino Arconti was registered as a Dealing Representative of Carter.

III. BACKGROUND AND PARTICULARS TO ALLEGATIONS

A. The Director's Decision

16. During the period July 2005 to September 2010, NAFG entered into loan agreements with investors at fixed annual rates of return of 12% to 15%, typically paid to investors on a monthly basis.

17. Each loan agreement constituted evidence of indebtedness and was thereby a "security" under the Act.

18. During the period July 2009 to April 2010, NAC issued shares with a 10% to 12% dividend rate.

19. During the period September 2007 to September 2010, Carter sold securities issued by NAFG and NAC to its clients relying on the accredited investor exemption under National Instrument 45-106 Prospectus and Registration Exemptions.

20. Following an OTBH held on August 4 and 26, 2010, Carter's registration was suspended by the Director's Decision.

21. On October 22, 2010, Carter filed a request for a review of the Director's Decision. Since that time, Carter has not taken any steps to proceed with its request for a review.

B. Suitability

22. Upon finding that Carter did not disclose to its clients investing in NAFG, an interest free loan of approximately \$2 million by NAFG to Prestige Motors and the severe financial difficulties being faced by NAFG, the Director found that Carter did not take reasonable steps to ensure that the purchase of NAFG securities was suitable to its clients and concluded that Carter did not meet its registration and suitability obligations under section 13.3 of National Instrument

31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (“NI 31-103”).

23. As actual and/or *de facto* officers and directors of Carter, Flavio Arconti and Gino Arconti authorized, permitted and/or acquiesced in Carter’s non-compliance with section 13.3 of NI 31-103 and, pursuant to section 129.2 of the Act, Flavio Arconti and Gino Arconti did not comply with section 13.3 of NI 31-103.

C. Failing to deal with clients fairly, honestly and in good faith

24. The Director also found that Carter breached section 2.1 of OSC Rule 31-505 Conditions of Registration (“OSC Rule 31-505”) which requires registrants to deal fairly, honestly and in good faith with its clients, by failing to disclose to its clients:

- (a) an interest free loan of approximately \$2 million by NAFG to Prestige Motors;
- and
- (b) the severe financial difficulties being faced by NAFG.

25. As actual and/or *de facto* officers and directors of Carter, Flavio Arconti and Gino Arconti authorized, permitted and/or acquiesced in Carter’s non-compliance with section 2.1 of OSC Rule 31-505 and pursuant to section 129.2 of the Act, Flavio Arconti and Gino Arconti did not comply with section 2.1 of OSC Rule 31-505.

D. Fraudulent Conduct

26. During the period January 1, 2009 to September 24, 2010, each of the Respondents directly or indirectly engaged or participated in acts, practices or courses of conduct relating to the securities of NAFG and NAC that each of them knew or reasonably ought to have known perpetrated a fraud on persons, contrary to section 126.1(b) of the Act and contrary to the public interest.

27. In particular, during this period, the Respondents offered and sold securities to investors promising interest rates of 12% to 15% in the case of NAFG and a 10% to 12% dividend rate in the case of NAC.

28. The Respondents made representations to investors and/or potential investors that expressed or implied that NAFG was a profitable and/or successful business.

29. In fact, during this period, the Respondents used new NAFG and/or NAC investor money either in whole or in part to pay NAFG and NAC investors their returns and their principal upon redemption.

30. At no time, did the Respondents advise investors in NAC or NAFG that investor funds would be used either in whole or in part to pay interest, dividends or principal to other NAC or NAFG investors.

31. On October 15, 2010, less than one month after the Director's Decision suspending Carter's registration, NAFG filed a Notice of Intention to make a proposal under the *Bankruptcy and Insolvency Act* (the "BIA") on the basis that it was an insolvent person pursuant to section 50.4(1) of the BIA.

E. Trading without Registration after the Automatic Suspension

32. After the Automatic Suspension, Gino Arconti continued to engage in and/or hold himself out as engaging in the business of trading in securities.

IV. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

33. Staff allege that the following conduct engaged in by the Respondents constituted breaches of Ontario securities law and/or was contrary to the public interest:

- (a) Flavio Arconti and Gino Arconti, as actual and/or *de facto* officers and/or directors of Carter, authorized, permitted and/or acquiesced in the non-compliance with Ontario securities law by Carter, as found by the Director and thereby were also not in compliance with section 13.3 of NI 31-103 and section 2.1 of OSC Rule 31-505 pursuant to section 129.2 of the Act;
- (b) Each of the Respondents directly or indirectly engaged or participated in acts, practices or courses of conduct relating to the securities of NAFG and NAC that they knew or reasonably ought to have known perpetrated a fraud on persons contrary to section 126.1(b) of the Act and contrary to the public interest;
- (c) Flavio Arconti and Gino Arconti, as actual and/or *de facto* officers and/or directors of NAFG and NAC, authorized, permitted or acquiesced in the breach of section 126.1(b) of the Act by NAFG and NAC and thereby also breached section 126.1(b) of the Act pursuant to section 129.2 of the Act; and
- (d) Gino Arconti engaged in and/or held himself out as engaging in the business of trading in securities without registration contrary to section 25(1) of the Act and contrary to the public interest.

34. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto this 28th day of December, 2011