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Securities
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**IN THE MATTER OF
JONATHAN CARTU, DAVID CARTU AND JOSHUA CARTU**

**REASONS AND DECISION
(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)**

Hearing: September 21, 22, and October 15, 2021

Decision: April 7, 2022

Panel: M. Cecilia Williams Commissioner and Chair of the Panel
Frances Kordyback Commissioner
Mary Anne De Monte-Whelan Commissioner

Appearances: Rikin Morzaria For Staff of the Commission

No one appearing on behalf of
Jonathan Cartu or Joshua Cartu

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REASONS AND DECISION

I. OVERVIEW

- [1] This case is about alleged unregistered trading and illegal distributions of binary options.
- [2] Staff alleges that from July 2013 to April 2017 (**Material Time**) more than 700 Ontario residents traded over \$1.4 million in binary options through entities that were operated by Jonathan Cartu (**Jonathan**), David Cartu (**David**) and Joshua Cartu (**Joshua**).¹
- [3] Staff alleges that the Cartus:
- a. engaged in unregistered trading of securities without an available exemption contrary to s. 25(1) of the *Securities Act (Ontario)*² (the **Act**);
 - b. engaged in distributions of securities without a prospectus and without an available exemption contrary to s. 53(1) of the Act;
 - c. engaged in deceptive behaviour by lying about the location of their operations, using aliases and obscuring their connection to the companies they owned and operated through the use of nominees, and that behaviour is not in the public interest; and
 - d. authorized, permitted and/or acquiesced in the conduct of the companies they operated.
- [4] On May 26, 2021, David entered into a settlement agreement with the Commission with respect to these allegations. This matter proceeded against Jonathan and Joshua (collectively the **Respondents**). We refer to David throughout these reasons wherever it is necessary to understand the facts and the allegations as they relate to the Respondents.
- [5] For the reasons set out below, we find that on a balance of probabilities:
- a. Jonathan and Joshua engaged in the business of trading securities without being registered and without an available exemption contrary to s. 25(1) of the Act;
 - b. Jonathan and Joshua distributed securities without a prospectus and without an available exemption contrary to s. 53(1) of the Act;
 - c. Jonathan engaged in the deceptive practices of lying about the location of their operations and the use of aliases and that behaviour engages the animating principle of the Act of restricting unfair market practices and procedures; and
 - d. Joshua acquiesced in the deceptive practice of the use of aliases, however that acquiescence alone, in one of three alleged deceptive practices, is insufficient to prove Staff's allegation that Joshua's behaviour is not in the public interest.

¹ Throughout these reasons, we refer to Messrs. Cartu by their first names, solely for convenience in distinguishing between them. We mean no disrespect nor informality in doing so.

² RSO 1990, c. S.5

II. BACKGROUND

- [6] Jonathan, Joshua and David are brothers with dual Canadian and Israeli citizenship. Staff alleges that the brothers operated an interconnected business operation to promote, sell and process binary options transactions from headquarters in Israel. In particular, Staff alleges that the brothers operated two online platforms for trading in binary options, www.beeoptions.com (for the **Beeoptions** brand of binary options) and www.glenridgecapital.com (for the **Glenridge Capital** binary option brand). Staff alleges that these websites, through which investors deposited money and engaged in binary options trading, were accessible to Ontario investors.
- [7] The following is a list of the entities through which Staff alleges Jonathan, Joshua and David operated the interconnected binary options business operation:
- a. **Tracy PAI Management Limited (Tracy PAI)** – Staff alleges that Tracy PAI operated a call centre to solicit deposits from investors into Beeoptions.
 - b. **Call4All Kft (Call4All)** – Staff alleges that Call4All operated a call centre to solicit deposits from investors into Glenridge Capital.
 - c. **UKTVM Ltd. (UKTVM)** – Staff alleges that UKTVM facilitated payment processing and provided “white label solutions” for Beeoptions binary options trades, from July 2013 until approximately December 2014.
 - d. **Greymountain Management Limited (Greymountain)** – Staff alleges that, from May 2015 until April 2017, Greymountain facilitated payment processing and provided “white label solutions” for Beeoptions and Glenridge Capital and for twelve third-party binary options platforms.

III. PRELIMINARY ISSUES

1. Service on the Respondents

- [8] As Jonathan and Joshua were unrepresented at the merits hearing and did not attend, the Panel asked Staff to confirm that the Respondents had been properly served with notice of the merits hearing.
- [9] Staff filed an affidavit of service of Jamie Stuart, confirming that on March 25, 2021, Jonathan and Joshua were served with notice of the merits hearing by email. Staff used email addresses for Jonathan and Joshua that were the same as those used by their former counsel who represented them prior to the commencement of this enforcement proceeding.
- [10] The Panel was therefore satisfied that the Respondents had been properly served in accordance with rule 6 of the Commission’s *Rules of Procedure and Forms*.³
- [11] Subsection 6(1) of the *Statutory Powers and Procedures Act (SPPA)*⁴ requires that “reasonable notice” be given to the parties to a proceeding. Section 7 of the SPPA authorizes a tribunal to proceed in the absence of a party when that party

³ (2019) 42 OSCB 9714

⁴ RSO 1990, c. S.22

has been given notice of the hearing. Given the above, the Panel was satisfied that the merits hearing could proceed in the absence of the Respondents.

2. Admission of transcripts of voluntary interviews

- [12] Staff sought to introduce transcripts of voluntary interviews that had been conducted with three Ontario-resident binary options investors. The interviews were not conducted under oath. Staff advised it had been operating on the understanding that each of the investors would provide affidavit evidence reflecting the contents of their voluntary interview. However, none of the investors attended to swear their affidavit. Since Staff had expected to be filing affidavit evidence of these individuals, Staff had not issued summons for any of the individuals to attend to give oral evidence.
- [13] Staff submits that the Panel has authority under s. 15(1) of the SPPA to admit as evidence at a hearing, whether or not given under oath, any oral testimony or any document or other thing. Hearsay evidence is admissible before most administrative tribunals, including the Commission, if it is relevant, subject to the tribunal's determination as to its weight.
- [14] Staff further submits that the Commission has admitted transcripts of voluntary interviews where the evidence included in those transcripts was relevant to the allegations.⁵ In each of the cases cited by Staff, the panels admitted into evidence transcript(s) of voluntary interviews.
- [15] In *Pogachar*, the Commission admitted 30 volumes of documents and transcripts, including transcripts of voluntary interviews with investors, and relied on the transcripts to conclude that the potential for dividends was a significant reason for investors to invest in the venture in question.⁶ In *FactorCorp*, Staff was permitted to file the transcript of a voluntary interview of a witness who had died prior to the start of the hearing.⁷ In *Sulja Bros.*, the compendium of documents admitted into evidence by the Commission, subject to the weight to be given to any included hearsay evidence, included transcript excerpts from compelled and voluntary interviews.⁸ In *Moncasa Capital Corp*, a hearing that proceeded in the absence of the respondents, the panel permitted Staff to file transcripts of voluntary interviews of a former salesperson of a respondent and cited those transcripts throughout its reasons.⁹
- [16] Staff also submits that, unlike *Moncasa* which involved the voluntary interview of a former salesperson of a respondent which contained arguably more contentious information, the voluntary statements Staff seeks to enter in this case are akin to standard investor questionnaires that go to the nature of the commercial practices that were presented to outside investors. By their nature, Staff submits, they are less controversial than the former salesperson's transcript admitted in *Moncasa*.

⁵ *Pogachar (Re)*, 2012 ONSEC 9 (**Pogachar**); *Pyasetsky (Re)*, 2013 ONSEC 14; *FactorCorp (Re)*, 2013 ONSEC 6 (**FactorCorp**); *Sulja Bros. Building Supplies Ltd*, 2011 ONSEC 16 (**Sulja Bros.**); *Moncasa Capital Corp*, 2013 ONSEC 20 (**Moncasa**)

⁶ *Pogachar* at paras 41, 42, 59, 76 and 84

⁷ *FactorCorp* at paras 55 and 212-214

⁸ *Sulja Bros.* at paras 16, 17, 19 and 20

⁹ *Moncasa Capital Corp* at paras 68, 84, 98, 108 and 153

- [17] We asked Staff to comment on the Commission’s decision in *Norshield Asset Management (Canada) Ltd et al*,¹⁰ a decision Staff had not referred to in its submissions on this issue. In *Norshield*, the Commission admitted into evidence transcripts of examinations under oath of five witnesses conducted by a court-appointed Receiver, using its discretion under s. 15(1) of the SPPA. However, the Commission commented that a panel should be careful not to place too much weight on the evidence if it is uncorroborated,¹¹
- [18] Staff submits that *Norshield* is consistent with its position on the admissibility of the voluntary statements. In *Norshield*, the respondents objected to the statements being admitted in part on the basis that they would be denied the opportunity to cross-examine the witnesses. The panel in that case, stated that while parties are entitled to a reasonable opportunity to comment on and contradict evidence, hearsay evidence need not be tested by cross-examination in all circumstances.¹² Staff submits that in the case before us, that issue was irrelevant given the Respondents failure to participate in the hearing. Staff also submits that it would be introducing evidence corroborating the voluntary statements.
- [19] The transcripts of the voluntary interviews are a form of hearsay. We have discretion under s. 15(1) of the SPPA to admit hearsay evidence. The evidence of Ontario investors is relevant to the issues before us of whether trading in binary options through Beeoptions and Glenridge Capital was accessible to Ontario residents and what representations, if any, were made to Ontario investors about the location and operations of those entities. We therefore admit the voluntary statements into evidence. What weight, if any, we give to the voluntary statements will depend on whether there is corroborating evidence, and if the statements are consistent with the other evidence in this matter, which we address in our analysis.

IV. ISSUES AND ANALYSIS

- [20] The issues we need to decide are:
- a. were Jonathan and Joshua in the business of trading securities without being registered and without an available exemption, contrary to s. 25(1) of the Act?
 - b. were Jonathan and Joshua engaged in the distribution of securities without a prospectus and without an available exemption, contrary to s. 53(1) of the Act?
 - c. did Jonathan and Joshua engage in, or authorize, permit or acquiesce in, deceptive behavior thereby engaging the animating principles of the Act?
- [21] The Panel heard oral evidence from Staff’s two investigator witnesses, Greg Ljubic (**Ljubic**) and Christine George (**George**). The Panel also considered affidavit evidence from Ljubic, George, three former employees of various of the Cartu entities, and three Ontario-resident binary options investors. Staff also

¹⁰ 2010 ONSEC 4 (*Norshield*)

¹¹ *Norshield* at paras 87-91

¹² *Norshield* at para 88

filed transcripts of voluntary interviews of three other Ontario-resident binary options investors, as discussed above.

- [22] Before turning to our analysis of the issues, we set out the basis for our conclusion that Jonathan, Joshua and David operated Beeoptions, Glenridge Capital, Tracy PAI, UKTVM, Greymountain and Call4All as an interconnected business operation as alleged by Staff.

1. Interconnected business operation

- [23] We find that Beeoptions, Glenridge Capital, Tracy PAI, Call4All, UKTVM and Greymountain were an interconnected business operation, based on the following evidence:
- a. Jonathan initially used a Beeoptions' email when communicating with Tracy PAI employees and then subsequently switched to a Tracy PAI email address, which he announced to all Tracey PAI employees.
 - b. When Nick Papa (**Papa**) was hired by Jonathan, Papa understood he was working for Beeoptions, as he was providing support for Beeoptions investors, but subsequently learned he was formally employed by Tracy PAI.
 - c. Olivier Omar (**Omar**), who was employed by Tracy PAI from November 2013 to April 2015, worked exclusively for Beeoptions, which he understood to be a division of Tracy PAI.
 - d. In a Merchant Application filed with payment card acquirer Credorax, UKTVM represented that its business name was "Beeoptions" and its "Business Model Overview" was "Binary Options". UKTVM also represented that it owned the domain name <http://www.beeoptions> and the Merchant Name "Beeoptions."
 - e. Jonathan sent an email to all Tracy PAI employees suggesting that UKTVM and Greymountain were Tracy PAI's only customers at the time.
 - f. In response to a request from Credorax for Greymountain documentation, Jonathan, who had no apparent title or ownership interest in Greymountain, responded "We'll provide you with everything you need right away."¹³
 - g. Ana Schmitman, who was identified on Tracy PAI's website as the Risk and Fraud Manager, writing as "Ana Schmitman, Tracy PAI Management," sent an undated letter on Greymountain letterhead to Credorax stating that "we are doing the best [sic] keep the integrity of the channel, Greymountain Management Limited."¹⁴
 - h. Papa was paid by Greymountain for work he performed for Jonathan on a separate venture, and for travel expenses and a laptop purchased for work he was conducting at Tracy PAI.

¹³ Exhibit 2, Ljubic Affidavit, Email exchange between Mark Creizman and Jonathan Cartu, November 5, 2014: DocID 9343-0001401

¹⁴ Exhibit 2, Ljubic Affidavit, Letter from Ana Schmitman, Tracy PAI Management on behalf of Greymountain to Credorax, undated: DocID 9343-0001402

- i. McCartan & Burke, a law firm in Dublin, Ireland, wrote a letter that it had been retained by Greymountain to express an opinion "about whether [Greymountain]'s primary activity as a Binary Options broker under the name Bee Options using URL: www.beeoptions.com requires a financial services license or a gambling license under the laws of Ireland."¹⁵
- j. In an agreement between Greymountain and Wirecard Bank, David was listed as the Proprietor while Jonathan was listed as the "General Contact," "Accounts Department," "Contact for Transaction Processing" and the "Recipient of the Payout Information." Jonathan's contact information was listed as jonathan@tracypai.com. Tracy PAI's then head of marketing was listed as the "Contact for Technical Matters" with the email tech@beeoptions.com.
- k. In a Credorax Merchant Application Form, David signed on behalf of Greymountain, David described the "Business Model Overview" as "Binary Options," listed the domain name as www.beeoptions.com and the merchant name as "Greymountain Management Ltd."
- l. Credorax wrote to the Malta Financial Services Authority and provided Credorax's understanding of Greymountain's operations. It described Greymountain as a "Binary Options Merchant" and noted that Greymountain owned the following URLs:
 - i. Glenridge Capital – glenridgecapital.com
 - ii. Bee Options – beeoptions.com
- m. Omar recalls hearing from one or more people on the Tracy PAI management team (which he described as Jonathan, Leeav Peretz (**Leeav**) and Natanel Peretz (**Natanel**)) that Tracy PAI was putting together another binary options brand and website called Glenridge Capital.
- n. Papa's evidence is that Jonathan told him that he, Joshua and David had established a call centre, Call4All, in Budapest to do sales or conversion work for Glenridge Capital, Beeoptions and another binary options brand. Jonathan told Papa that Call4All was co-owned by him, his brothers and Leeav and Natanel.
- o. Papa had observed the Call4All logo being designed in the marketing room of the Beeoptions / Tracy PAI offices.
- p. During his tenure at Tracy PAI, Papa saw work being done for the Greymountain website, including the logo, and observed website design activity taking place for Glenridge Capital.
- q. Lurie recalls seeing binders for UKTVM and Greymountain in Sandbox Media's (also known as Sandstorm Research & Development) (**Sandbox**) accounting offices. Sandbox is a business run by Joshua with offices at the Moshe Aviv Tower in Tel Aviv.

¹⁵ Exhibit 2, Ljubic Affidavit, Letter from McCartan & Burke dated June 25, 2015: DocID 9343-0001430

- r. Papa recalls seeing references to “white label solutions provided by” in reference to Greymountain and UKTVM, or both, on the Beeoptions website.
- s. In a tripartite settlement agreement among UKTVM, Credorax and Greymountain, signed by David for UKTVM, Greymountain assumed responsibility for any financial obligation on behalf of UKTVM to Credorax.
- t. AG, who is shown as the 100% shareholder of Greymountain at the date of incorporation, declared in a Declaration of Trust that he held those shares “for and on behalf of Mr. David Cartu (hereinafter called the Beneficial Owner.”
- u. In an affidavit relating to Greymountain’s petition to the High Court of Ireland to wind up because it could not pay its debts, David swore that he was the sole beneficial owner of Greymountain, and that a large part of Greymountain’s revenue was from offering “IT solution services to binary options merchants.”

2. Jonathan’s and Joshua’s involvement in the interconnected business operation

- [24] We conclude, based on the evidence below, that Jonathan and Joshua were involved in the interconnected business operation.
- [25] Beeoptions operated out of the Sandbox offices. Omar’s evidence is that Joshua occupied the larger office at that location, which had the Sandbox name on its wall.
- [26] In an online video, Joshua appears with a racing car that bears the Beeoptions logo.
- [27] Cara Lurie (**Lurie**), who was hired in 2011 as Sandbox’s office manager, gave evidence that:
 - a. Joshua and David were in charge of Sandbox.
 - b. Jonathan started the Beeoptions business in the Sandbox boardroom.
 - c. Joshua was aware of the Beeoptions operations in the Sandbox boardroom and did not object to that activity, was “on top of the business,” and “absolutely aware of everything that went on in the Sandbox office” and “ran the business from afar.”¹⁶
 - d. Joshua maintained an office at Sandbox.
 - e. Jonathan worked from the Sandbox boardroom, as he did not have his own office.
 - f. There was a large “Beeoptions” sign hanging on the wall in the Sandbox boardroom, visible to anyone in the office.
- [28] Papa’s evidence is that there was a general awareness that Jonathan, Joshua and David were in charge of Beeoptions, but that on a day-to-day basis, Jonathan was in charge of the office. Papa states that everyone at Beeoptions/Tracy PAI reported to Jonathan, who was very hands on.

¹⁶ Exhibit 10, Affidavit of Cara Lurie, sworn September 14, 2021 (**Lurie Affidavit**) at paras 16-17

- [29] According to Papa, there was a locked office at the Tracy PAI location that Jonathan identified as “Josh’s office.” Papa observed some of Joshua’s personal belongings in that office. Papa also observed that Joshua would occasionally come to the Tracy PAI office in the evening, sometimes with David, for meetings with Jonathan. Evidence from Papa, Lurie and Omar was that Tracy PAI’s sales teams worked evenings to align with regular European and North American business hours.
- [30] Jonathan offered Lurie a job in payroll at Tracy PAI in November 2014, and she worked for Tracy PAI until September 2015 as an office manager and personal assistant for Jonathan. Her functions included payroll and human resources work.
- [31] In 2014, Papa received an email from Jonathan to all Tracy PAI employees, and to Joshua and David, confirming that Jonathan would be changing his email from jon@beoptions.com to jonathan@tracypai.com.
- [32] A month later in 2014, Jonathan sent an office-wide message to Tracy PAI employees that stated, “This October is the month when I want all of you to understand who we are an [sic] what we are working for. All of you work for Tracy PAI (Tracy).”¹⁷
- [33] Jonathan led monthly company meetings for all Tracy PAI employees. According to Omar who was hired by Jonathan as an account manager, Jonathan, Leeav and Natanel set sales targets for Tracy PAI’s employees and led regular Tracy PAI team meetings to let employees know about significant events that might influence the markets so that the information could be discussed with investors.
- [34] Regarding Call4All, Lurie observed that Joshua was most frequently in Budapest, where Call4All was located, particularly after the launch of Beeoptions. Corporate documentation for Call4All lists Joshua as “Managing Director (senior officer)” from September 15, 2016, until April 16, 2019, Jonathan as “Managing Director (senior officer)” from August 10, 2015 to September 15, 2016, and Natanel as “Managing Director (senior officer)” from September 15, 2016, until March 1, 2017, lending credence to Papa’s evidence about the Call4All operations.
- [35] Before turning to the issue of whether Jonathan and Joshua, through their interconnected business operation, were engaged in the business of trading contrary to the Act, we address the law regarding the legal presumption under s.129.2 of the Act.

3. Directors and officers who authorize, permit or acquiesce in a company’s non-compliance are deemed by s.129.2 of the Act to have breached Ontario securities laws

- [36] Section 129.2 of the Act deems directors and officers who authorize, permit or acquiesce in a company’s non-compliance with Ontario securities law to have also not complied with the laws, regardless of whether any proceeding has been initiated or order has been made against the company in question.
- [37] No proceeding has been brought against any of Tracy PAI, UKTVM, Greymountain and Call4All. Staff submits that in the event that we find that Jonathan or Joshua did not directly engage in the breaches alleged by Staff, we

¹⁷ Exhibit 4, Jonathan Cartu Tracy PAI email, October 2, 2014

should rely on the deeming provisions of s. 129.2 of the Act to find that Jonathan and Joshua, as directors and/or officers of those companies, authorized, permitted or acquiesced in the companies' conduct and therefore Jonathan and Joshua have not complied with Ontario securities law.

- [38] The threshold for s. 129.2 is low, "as merely acquiescing in the conduct or activity in question will satisfy the requirement of liability."¹⁸
- [39] In *Rex Diamond Mining Corp*,¹⁹ the Commission found that the respondent authorized, permitted or acquiesced in the breaches of Ontario securities law, and thereby, in the language used in that decision "acted contrary to the public interest". The respondent in that case had limited knowledge of some of the events, but the Commission found that "he ought to have known about and should have made further inquiries" given his position as CFO of the company he "occupied a position of authority, responsibility and trust within the company."²⁰
- [40] We consider the application of s. 129.2 where appropriate in our analysis and findings below.

4. Did Jonathan and Joshua engage in, or hold themselves out as engaging in, the business of trading in securities?

- [41] Staff alleges that the Respondents breached s. 25(1) of the Act, which provides that no person or company shall engage in, or hold themselves out as engaging in, the business of trading in securities, unless the person or company is registered to do so. Neither Jonathan nor Joshua has ever been registered.
- [42] The registration requirement is a cornerstone of the securities regulatory framework. It is an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity and solvency on those who seek to be engaged in the business of trading in securities with or on behalf of the public.
- [43] Therefore, we must determine whether the Respondents engaged in "the business of trading in securities" or held themselves out as doing so.
- [44] Before turning to that issue, we address whether binary options are securities.

(a) Are binary options a security?

- [45] A binary option is a financial product where the investor receives a payout or loses their investment based on whether a reference asset, such as a share, commodity or currency, meets one or more predetermined conditions at a specified time; for example, if the price of a share of a particular issuer will be above a specified amount on a certain date. Binary options depend on the outcome of a "yes or no" proposition, hence the name "binary". Binary options have an expiry date and/or time. Whether a certain price of the underlying asset has been met at the time of expiry, determines whether the investor earns a profit or loses the investment.
- [46] Staff submits, and we agree, that binary options meet the definition of a "security" in s.1(1) of the Act. That definition includes, in paragraph (n) of

¹⁸ *Momentas Corp (Re)*, 2006 ONSEC 15 at para 118

¹⁹ 2008 ONSEC 18

²⁰ *Rex Diamond Mining Corp* at para 241

s.1(1), an “investment contract”. The Supreme Court of Canada held in *Pacific Coast Coin Exchange* that an “investment contract” will be found where:

- a. there has been an investment of money with a view to profit;
- b. in a common enterprise; and
- c. the profits are to be derived solely from the efforts from others.²¹

[47] The Commission concluded, in *TCM Investments Ltd (Re)*,²² that binary options met the definition of “investment contract and are, therefore, securities.²³ The panel in *TCM*, in coming to this decision, described binary options as all-or-nothing bets by the investor, where typically the bet is successful if a reference asset meets one or more predetermined conditions at a specified time. They settle in cash and do not provide for delivery of the reference asset.²⁴

[48] In an affidavit sworn for the Irish High Court, David Cartu provided a definition of the binary options from which Greymountain earned its revenue like that accepted by the Commission in *TCM*:

Binary options are financial options which allow a purchaser to make a bet as to the future price of a stock. The payoff is either some fixed monetary amount, where the future price has been met by a certain date, or nothing at all, if this price has not been reached by this date.

[49] As the panel in *TCM* did, we conclude that binary options meet the established test for determining if a product is a security as we find there was an investment of funds with a view to profit, in a common enterprise, where the profits are to be derived solely from the efforts of others.

(b) Business trigger

i. The test

[50] For the registration requirement to apply to a person or company, the business of trading in securities need not be the only business in which that person or company is engaged. As the Commission has previously held, we “must determine whether the activities in this case cross the line between permissible solicitation and the business of trading.”²⁵

[51] The Commission has adopted Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations (31-103CP)*, which, among other things, sets out criteria to be considered in determining whether a person or company is engaged in a business when trading or advising in securities.

[52] While 31-103CP is not part of Ontario securities law, and therefore is not directly binding on the Respondents, the “business purpose” test in s. 1.3 (also referred to as the “business trigger”) includes the following factors, on which Staff relies and which the Commission has adopted in other proceedings.²⁶ We consider it

²¹ 1977 CanLII 37 (SCC), [1978] 2 SCR 122 at para 128

²² 2017 ONSEC 35 (**TCM**) at para 24

²³ *TCM* at para 24

²⁴ *TCM* at para 24

²⁵ *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 (**Money Gate**) at para 143

²⁶ *Meharchand (Re)*, 2018 ONSEC 51 at para 111; *Money Gate* at paras 144-145

appropriate to apply these factors in assessing the Respondents' conduct in this case:

- a. directly or indirectly soliciting securities transactions;
- b. trading with repetition, regularity, or continuity, whether that activity is the sole or even primary endeavour. Regularly trading in any way that produces or is intended to produce profits is considered to be for a business purpose;
- c. receiving or expecting to receive compensation for trading; and
- d. engaging in activities like those of a registrant, including by setting up a company to sell securities, or by promoting the sale of securities.

[53] We now review each of these factors in turn. Due to the evidence supporting the analysis on factors a., b. and d. overlapping, we consider those factors together.

ii. Directly or indirectly soliciting securities transactions, trading with repetition, regularity or continuity and engaging in activities like those of a registrant

[54] We conclude for the reasons below, that Jonathan and Joshua solicited securities transactions, traded with repetition, regularity and continuity and engaged in activities like those of a registrant.

[55] The homepage of Beeoptions' website offered individuals the opportunity to trade binary options "NOW," with "no hassle withdrawals," "guaranteed – up to 85% profit per trade," "cash rewards for referrals" and "risk-free trading."²⁷

[56] Beeoptions' website also promoted the ease of trading, stating "BEEOPTIONS IS THE SIMPLEST AND MOST STRAIGHTFORWARD WAY TO TRADE BINARY OPTIONS ONLINE." The services provided to Beeoptions' investors are described as follows:

- "We give you the important information, in the plainest terms, so you can make the best choices regarding your binary options trades. We believe this is the best way for you to maximize your profits."
- "Our team of trading consultants are available to guide you through your first binary options trades. As you become more advanced, we are here to advise you in making informed investment decisions. We will work with you to increase your returns."²⁸

Similar statements are made on the "Terms and Conditions" page of the Beeoptions' website.

[57] Papa's evidence is that, as of the fall of 2015, in addition to Beeoptions, Glenridge Capital and three other binary options brands were operating out of Tracy PAI's offices. According to Papa, the conversion and retention departments at Tracy PAI, whose roles were to obtain new clients and elicit further deposits from existing clients, were involved in the sale of binary options for Glenridge Capital, and Call4All was also doing conversions for Glenridge Capital, Beeoptions and another third-party binary options brand.

²⁷ Exhibit 3, Web Archives – beeoptions.com, December 6, 2013

²⁸ Exhibit 7, Web Archives – beeoptions.com, March 16, 2016

- [58] Lurie's, Papa's and Omar's evidence is that during their time with Tracy PAI their activities were focused on Beeoptions' binary options business. Their evidence about the Beeoptions' operations is consistent. There was a sales, or conversion, team lead by Natanel and a retention team lead by Leeav. The evidence from Lurie, Papa and Omar was that the teams worked Monday to Friday from 3:00 pm to 11:00 pm to correspond with a typical European and North American schedule.
- [59] Lurie's and Omar's evidence is that the sales office contained a whiteboard which provided commission and bonus amounts for the sales team members. It was updated daily and also contained information regarding sales targets the team members tried to meet in order to win prizes such as trips.
- [60] When Papa joined Beeoptions, Jonathan assigned him to customer support to learn the business. Originally, there were two customer support employees, but the number grew to 6 by October 2015. In customer support, Papa answered calls from Beeoptions investors and redirected their calls. The calls were primarily to arrange withdrawals or to speak with account managers. According to Papa, the account managers' role was to solicit further deposits from existing investors and to grow the investors' Beeoptions' account. Papa's evidence is that most of the calls came from the United States but that there were also calls from Canada and the United Kingdom.
- [61] This is consistent with Omar's evidence. He was employed as an account manager in the retention department, working with existing Beeoptions investors. He was initially assigned a list of 200 customers and the list was regularly refreshed. He typically spoke with six to ten investors per shift. Omar had access to a dashboard for each client showing the investor's name, country of residence, phone number, email address, trades they had made and the amount of money in their Beeoptions account.
- [62] Omar spoke with French clients in several locations, including Quebec and English-speaking clients in other countries. His role was to tell investors what was happening in the market and to advise them to pay attention to particular assets that might be moving in value. He also advised investors of different promotions being offered.
- [63] While Omar did not recommend trades to investors, his evidence is that the culture of the office was to get investors to add larger deposits because of whatever event was going on or giving specific trading instructions. Omar's evidence is based on conversations he heard other employees have with investors and among other employees over lunch. He believed that management was aware of this practice and he never saw or heard anyone from management ask account managers to stop directing investors to make specific trades.
- [64] According to Papa, Tracy PAI received customer leads for Beeoptions through affiliate entities that would be paid from \$250 to \$600 per referral. New affiliate campaigns resulted in a significant increase in emails to conversion and customer support departments. Papa states that, in some cases, there would be over 2,000 unanswered customer support emails. In the fall, 2014, Papa recalls Jonathan asked Leeav to notify an affiliate to stop sending leads because they could not handle the volume.

- [65] Lurie's evidence is that there were regular sales meetings where the leader on the sales board would be cheered.
- [66] Luke Chmilenko (**Chmilenko**), a resident of Burlington, Ontario, invested in binary options through the Beeoptions website and trading platform after coming across the name and conducting his own research on the company.
- [67] Chmilenko signed up for a Beeoptions account on the Beeoptions' website. He had a brief conversation with someone at Beeoptions and received a welcome email from Jon Cartier (an alias used by Jonathan, as discussed further below in the section dealing with the alleged deceptive practices). The email contained account login details and advised that the account was being referred to a senior account manager who would be Chmilenko's "personal trading consultant," "introduce the platform," "help with first trades" and provide advice for "developing the most profitable investment strategy."²⁹ Chmilenko also received an email from a Beeoptions Senior Account Manager. Chmilenko made 2 deposits to his Beeoptions account from his credit card and made a number of small trades through the Beeoptions website.
- [68] We conclude that:
- a. Jonathan:
 - i. was directly or indirectly involved in the solicitation of transactions for Beeoptions and Glenridge Capital;
 - ii. traded in binary options through Beeoptions and Glenridge Capital with repetition, regularity and continuity; and
 - iii. engaged in activities like a registrant by his involvement in the interconnected business operation that included establishing the Beeoptions and Glenridge Capital binary options trading brands, promoting the sale of binary options under those brands, operating the call centres to solicit investors in binary options and establishing UKTVM and Greymountain to process payments for their binary options trading activities; and
 - b. Joshua:
 - i. was directly or indirectly involved in the solicitation of transactions for Glenridge Capital and authorized, permitted or acquiesced in the solicitation of transactions for Beeoptions;
 - ii. traded in binary options through Glenridge Capital with repetition, regularity and continuity and authorized, permitted or acquiesced in the trading of binary options through Beeoptions; and
 - iii. given the deeming provisions of s. 129.2 of the Act, authorized, permitted or acquiesced in activities like a registrant through his involvement in the interconnected business operation that included establishing the Beeoptions and Glenridge Capital binary options trading brands, promoting the sale of binary options under those brands, operating the call centres to solicit investors in binary

²⁹ Exhibit 14, Affidavit of Luke Chmilenko, sworn September 14, 2021 at para 14

options and establishing UKTVM and Greymountain to process payments for their binary options trading activities.

iii. Receiving or expecting to receive compensation for trading

- [69] Staff submits that the flow of funds from UKTVM and Greymountain to companies owned or controlled by Jonathan and Joshua demonstrates that they received compensation for trading in binary options.
- [70] UKTVM was incorporated on October 8, 2012 in the UK and was the payment processor for Beeoptions from July 2013 until December 2014. Thereafter, Greymountain became the payment processor for Beeoptions from December 2014 and for Glenridge Capital when it started operations in the fall of 2015.
- [71] We found earlier that UKTVM and Greymountain were part of the interconnected business operated by Jonathan, Joshua and David.
- [72] In various correspondence referred to above in our analysis leading to the conclusion that the Respondents were involved in an interconnected business operation, the primary business of UKTVM and Greymountain is stated to be binary options. In addition, Jonathan's email to all Tracy PAI employees of October 2, 2014 states that UKTVM and Greymountain were, then, Tracy PAI's only clients.
- [73] We therefore conclude that the monies earned by UKTVM and Greymountain were from their activities as payment processors for the interconnected binary options businesses Jonathan, Joshua and David operated and from the "white label solutions" offered by UKTVM and Greymountain to third-party binary options companies.
- [74] George's evidence is that \$54.8 million dollars from UKTVM's and Greymountain's binary options payment processing activities was paid to six companies, two of which appear from the evidence to be companies controlled by David. As this proceeding is with respect to the activities of Jonathan and Joshua only, we have removed from our analysis the entities solely connected to David and the \$12.5 million paid by UKTVM and Greymountain to those entities.
- [75] We therefore consider the \$45.9 million paid by UKTVM and Greymountain to the following companies, which Staff allege are connected to Jonathan and Joshua:
- a. \$13.4 million to Blue Moon Investments Limited (**Blue Moon**);
 - b. \$13 million to Orlando Union Inc. (**Orlando Union**);
 - c. \$900,000 to Call4All; and
 - d. \$15 million to Tracy PAI.
- [76] We now turn to consider the connection between Jonathan and Joshua and these companies. Based on the following evidence, we find that the Respondents were beneficiaries of the \$45.9 million paid to these four companies by UKTVM and Greymountain.

Blue Moon

- [77] We find that Jonathan was the beneficial owner of Blue Moon based on the following evidence:

- a. Blue Moon was incorporated on January 12, 2012 and dissolved on March 27, 2017.
- b. The sole director, listed on the Register of Directors, from June 12, 2012 until March 17, 2015 was HNT who, in turn, declared in a Declaration of Trust dated February 6, 2013 that he held all the outstanding issued shares of Blue Moon as nominee and Trustee for Jonathan.
- c. Blue Moon appointed Jonathan as the true and lawful attorney of Blue Moon to conduct the company's business and affairs in a January 17, 2014 Power of Attorney.
- d. In various account documents filed by Blue Moon with an Austrian bank in 2014 and 2016, Jonathan was referred to as the "authorized signatory" and "beneficial owner".
- e. On January 24, 2017, Jonathan wrote to that bank requesting that the bank close Blue Moon's account and transfer the outstanding balance to Jonathan's personal account at the bank.

Orlando Union

[78] We find that Joshua was the beneficial owner of Orlando Union because a Register of Beneficial Owners for Orlando Union shows Joshua as the 100% beneficial owner "held via trust declaration" effective October 18, 2010.

Tracy PAI

[79] Jonathan held himself out, on LinkedIn and in documents he provided to a bank in Cyprus, as the beneficial owner of and managing director of Tracy PAI.

Call4All

[80] We find that Joshua was a senior officer of Call4All because corporate documentation listed Joshua as its "Managing Director (Senior Officer)" from September 15, 2016 to April 16, 2019.

[81] Papa's evidence is that Call4All was established by Jonathan, Joshua and David with Leeav and Natanel as co-owners.

[82] Joshua is also listed in the Call4All corporate documentation as a "member". However, Staff provided us with no evidence about the meaning or relevance of being a "member" of the type of Hungarian company Call4All was registered as.

(c) Conclusion regarding the allegation that Jonathan and Joshua traded securities in breach of s. 25(1) of the Act

[83] We conclude that during the Material Time Jonathan and Joshua were in the business of trading securities, based on our findings above that:

- a. they directly and indirectly solicited transactions in Beeoptions and Glenridge Capital through the websites for those brands and through the Tracy PAI and Call4All call centres;
- b. binary options were regularly traded by investors through the Beeoptions and Glenridge Capital websites;

- c. they offered binary options for sale through the Beeoptions and Glenridge Capital websites and the Tracy PAI and Call4All call centres; and
- d. they were remunerated for these activities through the payments made to entities owned or controlled by them from UKTVM and Greymountain, entities that acted as the payment processors for their binary options trading activities.

[84] We further conclude that Jonathan and Joshua were in the business of trading in Ontario based on the following evidence:

- a. Chmilenko, a resident of Burlington, Ontario provided evidence that he opened a binary options trading account with Beeoptions on March 24, 2014 and actively traded in that account for several months in 2014 before losing all his invested funds;
- b. Jacqueline Amable, a resident of Mississauga, Ontario provided evidence that she received an unsolicited call from a representative at Edgehill Capital soliciting trading in binary options and subsequently had five attempts for charges against her credit card listing "Greymountain" as the merchant attempting to process the charges;
- c. Stephen McGurn a resident of Barrie, Ontario provided evidence that he traded binary options with Edgehill Capital and that his account manager at Edgehill told McGurn that charges against his credit cards for his binary options trades would be processed by Greymountain. Charges against McGurn's credit card for binary options trades were by "Greymountain Mgmt Ltd" and "GreymountainManagement Dublin"; and
- d. The evidence from the transcripts of three Ontario residents who gave voluntary statements as part of Staff's investigation, which evidence we accept because of its consistency with the other evidence, namely:
 - i. Mohamed Shukry, a resident of Ontario, traded binary options with two or three companies, including Beeoptions, and received credit card charges for three binary options' transactions from Greymountain;
 - ii. Edward Philips, a resident of Wasaga Beach, Ontario, deposited money in a third-party binary options trading account which was charged on his credit card to Greymountain in Dublin; and
 - iii. Nandraj Somaroo, a resident of Brampton, Ontario, traded binary options with two companies and had nine transactions on her credit card statements charged to "Greymountain Management Ltd." between January 26, 2017 and April 24, 2017.

[85] There is no record in the National Registration Database of Jonathan or Joshua being registered with the Commission during the Material Time. Nor is there any record of either of them having been registered with the Commission in the records of the Compliance and Registrant Regulation Branch of the Commission. We also have no evidence of either Jonathan or Joshua relying on an exemption from the requirement to be registered.

[86] We therefore find that Jonathan and Joshua breached s. 25(1) of the Act by engaging in unregistered trading of securities.

5. Did Jonathan and Joshua engage in the distribution of securities without a prospectus

- [87] Staff submits that each sale of Beeoptions and Glenridge Capital binary options constituted a distribution of securities, that those sales were conducted without a prospectus being filed or receipted and, therefore, Jonathan and Joshua breached s. 53(1) of the Act.
- [88] Subsection 53(1) of the Act provides that unless a prospectus has been properly filed and receipted, no person or company shall trade in a security on their own account or on behalf of any other person or company if the trade would be a distribution of the security.
- [89] A “distribution” is defined in s. 1(1) of the Act as a trade by or on behalf of an issuer in previously unissued securities of that issuer.
- [90] Staff submits that in *TCM* the Commission held that each trade in binary options was a distribution as the binary options had not been previously issued.³⁰ We adopt this conclusion.
- [91] Ljubic’s evidence is that there is no record in the System for Electronic Document Analysis and Retrieval of a prospectus or preliminary prospectus having been filed for Beeoptions or Glenridge Capital or for names like “Beeoptions” or “Glenridge Capital”.
- [92] In addition, Ljubic’s evidence is that there was no record of either Beeoptions or Glenridge Capital having been a reporting issuer during the Material Time or of either filing a prospectus, an offering memorandum, or any reports of exempt distributions as required under the applicable prospectus exemption provisions, and no record of exemptive relief from any of the requirements to file these documents having been granted to Beeoptions or Glenridge Capital.
- [93] The prospectus requirement is another cornerstone of Ontario’s securities regulatory regime. It is essential as it seeks to ensure that investors are properly equipped to assess the risks of an investment and to make an informed investment decision.³¹
- [94] We find that Jonathan and Joshua breached s. 53(1) of the Act by distributing binary options without a prospectus, with no applicable exemptions, because:
- a. we found that they were engaged in the business of trading binary options under the Beeoptions and Glenridge Capital brands;
 - b. we find each Beeoptions and Glenridge Capital binary options sold were previously unissued securities;
 - c. we find that the trades in the previously unissued binary options meet the definition of a “distribution”; and
 - d. no preliminary prospectus or prospectus was filed for Beeoptions or Glenridge Capital, and consequently no prospectus was receipted for either issuer.

³⁰ *TCM* at para 27

³¹ *Money Gate* at para 168

6. Did Jonathan and Joshua engage in deceptive behavior that is not in the public interest

[95] Staff submit that Jonathan and Joshua engaged in conduct “contrary to the public interest” by engaging in deceptive practices in the solicitation of binary options investments, including:

- a. making misrepresentations to investors about their identities and the identities of their representatives;
- b. concealing the true location of their operations; and
- c. using nominees to obscure their involvement in binary options trading activities.

Staff submits each of these deceptive practices independently amounts to conduct contrary to the public interest.

[96] The phrase “conduct contrary to the public interest” does not appear in the Act. The concept arises from the opening words of s. 127 of the Act, which gives the Commission broad authority to make “orders if in its opinion it is in the public interest to make the...orders”.

[97] The Commission may exercise its jurisdiction to find that conduct, which does not constitute a breach of Ontario Securities Law, is nevertheless not in the public interest. The Commission has done so where it finds that the conduct is abusive of the capital markets or engages an animating principle of the Act.³²

[98] The fundamental animating principles of securities regulation, set out in s. 2.1 of the Act, include:

- a. requirements for timely, accurate and efficient disclosure of information;
- b. restrictions on fraudulent and unfair market practices and procedures; and
- c. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[99] Staff cites several cases where the Commission has exercised its public interest jurisdiction in the absence of a specific breach of the Act, none of which are directly on point and all of which are decisions approving settlement agreements. However, these settlement approval decisions illustrate that the Commission has exercised its jurisdiction in a broad range of situations including failure to adequately know clients and ensure investments were suitable, failure to take appropriate steps to determine conflicts of interest before investing a client’s money; participating in and facilitating manipulative trading in shares; failure to take necessary steps to provide for timely delivery of exchange traded fund disclosure documents; and failure to comply with a firm’s trade pre-clearance policy.³³

³² *Augeci (Re)*, 2015 ONSEC 2 at paras 121-126, 174-175 and 715-717

³³ *CoinLaunch Corp (Re)*, 2019 ONSEC 26 at para 21; *eToro (Europe) Limited*, 2018 ONSEC 49 at para 18; *Clifton Blake Asset Management Ltd (Re)*, 2019 ONSEC 12 at para 4; *Questrade Wealth Management Inc.*, 2018 ONSEC 58 at para 15; *Seemann (Re)*, 2018 ONSEC 27 at para 4(d); *National Bank Financial Inc (Re)*, 2018 ONSEC 4 at para 2; and *Neher, Jorge*, 2017 ONSEC 18

[100] We find, for the reasons set out below, that Jonathan engaged in the deceptive practices of using aliases and concealing the true location of their operations and that Joshua authorized, permitted or acquiesced in the deceptive practice of using aliases. We find that Jonathan's conduct engages the animating principles of the Act and is not in the public interest. However, we do not find that Joshua's lesser conduct of acquiescing in the use of aliases in these circumstances is sufficient to engage the animating principles of the Act. We address the allegations of deceptive practices with respect to each of the Respondents in turn.

(a) Jonathan

i. Misrepresenting his identity and the identity of his representatives

[101] We find that Jonathan used the alias "Jon Cartier," based on the following evidence:

- a. a welcome email from Beeoptions to investor Chmilenko was from "Jon Cartier, Managing Director, Beeoptions";
- b. Omar, Papa and Lurie all stated in their evidence that Jonathan used the alias "Jon Cartier"; and
- c. in an email exchange between Nicole Smith, Director of Customer Support for Beeoptions, and Stephanie Hodes, a job recruiter, Smith provided a signed and stamped signature of "Jonathan Cartu, our Managing Director." The signature provided is "Jonathan Carter." Hodes asks if it is a real name and whether there is a corporate stamp with the name. Smith responds, "He's the Managing Director but that's his 'stage name'" and indicated that she would provide a "fresh one tomorrow (with his real name)."³⁴

[102] We also find that aliases were used by representatives of Beeoptions and Tracy PAI and that Jonathan was aware of this practice, based on the following evidence:

- a. Omar's evidence is that:
 - i. he was instructed to adopt an alias by either Jonathan or another Tracy PAI management staff;
 - ii. Omar adopted the alias "Oliver Jones", was given an email address with that name and identified himself as such when speaking with investors;
 - iii. Jonathan sat beside Omar in the Tracy PAI offices and would have been aware of how he identified himself to investors;
 - iv. Omar was aware that other account managers also used aliases and he provided the aliases he was aware were used by Tracy PAI management, including Jonathan, Leeav and Natanel;
- b. Papa's evidence is that:

³⁴ Exhibit 2, Ljubic Affidavit, Email thread between Nicole Smith and Stephanie Hoads from November 9, 2014 to November 10, 2014: DocID Nicole Smith-01-000000109

- i. everyone at Beeoptions was assigned an alias;
 - ii. Papa's alias was "Anthony Edwards";
 - iii. he prepared a table of the aliases used by Beeoptions personnel, including management personnel Jonathan, Leeav, Natanel, Smith and others;
 - iv. Smith used the alias "Sara Smith";
 - v. Smith, using her "Sara Smith" alias, sent an email to the customer support team introducing a new team member, Phoebe, and advised that Phoebe "is in the system as Regina Young."³⁵
- c. Lurie's evidence is that:
- i. Staff involved in sales at Tracy PAI used aliases;
 - ii. this included management personnel such as Jonathan, Leeav and Natanel;
 - iii. the decision to use aliases was a "top-down decision";³⁶ and
 - iv. aliases had been used at Sandbox when dealing with customers and it was known throughout Tracy PAI that Tracy PAI/Beeoptions was using the same approach.

ii. Concealing true location of their operations

[103] We find that it was the practice of Beeoptions and Tracy PAI to conceal from investors that they operated in Israel, and that Jonathan was aware of this practice, based on the following evidence:

- a. Papa's evidence is that, while working in Customer Support at Tracy PAI, he was instructed by Smith not to disclose Beeoptions/Tracy PAI's Israeli location to callers;
- b. Omar's evidence is that:
 - i. the procedure at Tracy PAI, confirmed by both Jonathan and Leeav, was to not tell Beeoptions investors that they were located in Israel;
 - ii. if asked by an investor about their location he would try to divert the question but, if pressed, would refer the investor to the Beeoptions website contact page, which listed a London, UK address;
 - iii. if asked by an investor, he would confirm that he was calling from London, England; and
 - iv. as Jonathan was seated at the desk beside him, Omar believed that Jonathan was aware of what Omar was telling investors about the location.
- c. Shukry, an Ontario resident who invested in binary options with two or three platforms, including Beeoptions, stated during his voluntary

³⁵ Exhibit 11, Affidavit of Nick Papa, sworn September 14, 2021 at para 38

³⁶ Exhibit 10, Lurie Affidavit at para 59

interview with Staff that he was told by his Beeoptions contact that Beeoptions was located in Canada. We accept Shukry's evidence given its consistency with the evidence from Papa and Omar that Beeoptions employees were instructed to conceal the true location of Beeoptions.

iii. Using nominees to obscure their involvement in binary options trading activities

- [104] Staff alleges that Jonathan used nominees to obscure his involvement in the binary options trading activities.
- [105] The use of nominees is a common corporate practice that may not be, in and of itself, deceptive. Staff's evidence is that Jonathan used a nominee for his corporate entity Blue Moon and that nominee directors and shareholders were used by David for UKTVM and Greymountain.
- [106] Although we have found that Jonathan was part of the interconnected business operations that included UKTVM's and Greymountain's payment processing functions, we do not consider Jonathan's personal use of a nominee and David's use of nominees for UKTVM and Greymountain sufficient to conclude that Jonathan was using nominees to obscure his involvement in the interconnected business operation and was, therefore, a deceptive practice.

iv. Conclusion regarding the allegations against Jonathan of engaging in deceptive practices

- [107] We conclude that Jonathan engaged in the deceptive practices of using aliases and concealing the true location of the binary trading operations.
- [108] We find that these deceptive practices engage the animating principle of the Act of restricting unfair market practices and procedures. Investors in binary options sold under the Beeoptions and Glenridge Capital brands did not know who they were dealing with when they communicated by telephone or email, or where the business operated. Such unfair and improper practices undermine the capital markets and the public's confidence in those markets. We therefore find that Jonathan's conduct is not in the public interest.

(b) Joshua

i. Misrepresenting his identity and the identify of his representatives

- [109] There is no evidence that Joshua used an alias. We find that Joshua was aware that Jonathan used an alias. Jonathan's email about changing from a Beeoptions email address to a Tracy PAI email address was sent from "Jon Cartier (jon@beeoptions.com)" and was sent to Joshua, among others.
- [110] Papa's evidence is that Leeav and Natanel used aliases at Beeoptions/Tracy PAI. Leeav's alias was "Lee Cole" and Natanel's alias was "Steven Grey". We conclude that it is more likely than not that Leeav and Natanel did not cease using aliases when they moved to Call4All as the co-owners. Lurie's evidence is that aliases were used at Sandbox, Joshua's business. Joshua was a Managing Director and senior officer of Call4All and, given that position of authority and responsibility in Call4All, ought to have known about these practices.

[111] The bar for relying on the deeming provisions of s. 129.2 of the Act is low. Given our finding that Jonathan, Joshua and David operated the binary trading business as an interconnected business operation, combined with the evidence that Joshua knew Jonathan used an alias, the use of aliases at Sandbox, Joshua's position of authority with Call4All, and that it is more likely than not that Leeav and Natanel continued the practice of using aliases at Call4All, we find that Joshua acquiesced in the misrepresenting of identities.

ii. Concealing the true location of the operations

[112] There is insufficient evidence, in our view, to conclude that Joshua engaged in concealing the true location of the Cartu's interconnected business operation or that he authorized, permitted or acquiesced in that activity. Therefore, Staff has not established this allegation.

iii. Use of nominees to obscure their involvement in the binary options trading activities

[113] Staff's evidence is that Joshua used a nominee shareholder for his company Orlando Union and that David used director and shareholder nominees for UKTVM and Greymountain. As we concluded with respect to Jonathan, we find this is insufficient evidence to conclude that the use of nominees by Joshua was intended to obscure his involvement in the interconnected business operation and was, therefore, a deceptive practice.

iv. Conclusion of the allegations against Joshua of engaging in deceptive practices

[114] We find that Joshua acquiesced in the deceptive practice of the use of aliases in the Cartu's interconnected business operation. However, we conclude that this acquiescence in one of three alleged deceptive practices is not sufficient to find that Joshua's conduct engaged the animating principle of the Act of restricting unfair market practices and procedures.

V. CONCLUSION

[115] We therefore conclude, on a balance of probabilities, that:

- a. Jonathan and Joshua were in the business of trading securities without being registered and without an available exemption, contrary to s. 25(1) of the Act;
- b. Jonathan and Joshua were engaged in the distribution of securities without a prospectus and without an available exemption, contrary to s. 53(1) of the Act; and
- c. Jonathan engaged in deceptive behavior that is not in the public interest.

[116] The parties shall contact the Registrar on or before April 21, 2022, to arrange an attendance for a hearing regarding sanctions and costs. That attendance is to take place on a date that is mutually convenient, that is fixed by the secretary and that is no later than May 13, 2022.

[117] If the parties are unable to present a mutually convenient date to the registrar, then each party may submit to the Registrar, for consideration by a panel of the Commission, a one-page written submission regarding a date for an attendance. Any such submission shall be submitted by 4:30 pm on or before April 21, 2022.

Dated at Toronto this 7th day of April, 2022.

"M. Cecilia Williams"

M. Cecilia Williams

"Frances Kordyback"

Frances Kordyback

"Mary Anne De Monte-Whelan"

Mary Anne De Monte-Whelan