



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- AND -

**IN THE MATTER OF
MERAX RESOURCE MANAGEMENT LTD.,
carrying on business as CROWN CAPITAL PARTNERS,
RICHARD MELLON and ALEX ELIN**

**REASONS AND DECISION
(Section 127 of the Act)**

Hearing: January 17 – 21, 2011
March 1, 2011

Decision: December 12, 2011

Panel: Patrick J. LeSage - Commissioner and Chair of the Panel
Sinan O. Akdeniz - Commissioner

Appearances: Tamara Center - For Staff of the Commission

Self-represented: - Richard Mellon
- Alex Elin

No one appeared on behalf of Merax Resource Management Ltd., carrying on business as Crown Capital Partners.

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REASONS AND DECISION

I. BACKGROUND

[1] This was a hearing before the Ontario Securities Commission (the “Commission”) pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) to consider whether Alex Elin (“Elin”) and Richard Mellon (“Mellon”) (together, the “Respondents”) breached the Act and acted contrary to the public interest.

[2] This proceeding was commenced by a Statement of Allegations dated November 21, 2006 and a Notice of Hearing issued on November 29, 2006. Staff of the Commission (“Staff”) subsequently made amendments to their allegations and on November 10, 2010 Staff issued their final Amended Amended Statement of Allegations in this matter.

[3] The parties named in the Amended Amended Statement of allegations are Merax Resource Management Ltd., carrying on business as Crown Capital Partners (“Merax”), Mellon and Elin. During the hearing, the Panel ruled that the respondent Merax was not properly served with notice of this hearing. On January 26, 2011, Staff issued a Notice of Withdrawal which noted that on May 15, 2006, Merax was dissolved as a corporation and Staff withdrew its allegations against Merax. This decision therefore only addresses the allegations brought against Elin and Mellon.

[4] The Respondents were the sole directors of Merax, which operated as Crown Capital Partners (“CCP”). Staff alleges that the Respondents were the sole directing minds of both CCP and Crown Capital Partners Limited (“CCPL”), the company name used to market and sell securities to investors. Staff alleges that CCPL was used by the Respondents interchangeably with CCP, the trade name for Merax.

[5] Staff alleges that the Respondents, directly or through representatives, sold securities through CCPL between January 2003 and November 2004. Staff further alleges that CCPL was represented to investors as an underwriter and agent in sales of securities in Karp Mineral Resources Inc. (“Karp”) and Legacy Mining Corp. (“Legacy”).

[6] Staff alleges that the Respondents breached subsections 25(1)(a) of the Act (trading without registration), 38(2) (making undertakings regarding the future price of value of securities), 38(3) (making representations regarding the listing of securities on an exchange) and 53(1) of the Act (engaging in a distribution of securities without fulfilling the Act’s prospectus requirements). Staff alleges the Respondents’ conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

[7] Mellon and Elin are alleged to have been involved in a sophisticated fraudulent investment scheme. The facts relating to investments made by investors are largely undisputed by the Respondents. What they do contest, however, is their involvement in the investment scheme.

A. The CCPL Investment Scheme

[8] Individuals, mainly in Europe, were fraudulently induced to invest in shares of two companies, Karp and Legacy, as a result of solicitations from CCPL representatives. The evidence from the investors who testified at the hearing was that they were contacted over the telephone by an individual who was calling on behalf of CCPL. We were presented with evidence that investors dealt with CCPL representatives who identified themselves variously as Robert Mitchell, Stephen Fletcher, Andrew Keegan, Eric Davis, Bianca Mastracci and Isabella Marcucci. Investors were told that CCPL provided financing to smaller companies that were about to go public. Prospective investors were provided with the address for CCPL's website, which contained detailed information on the company and listed contact information for locations in Switzerland, the Isle of Man and St. Vincent and the Grenadines.

[9] Investors were generally provided with the following CCPL marketing materials:

- An eight-page CCPL brochure, which describes CCPL as “[a]n investment and capital advisory firm” with a mission to “... provide our corporate customers [with] early-stage capital to develop their business prospects and create shareholder value. International investors earn an optimum return on invested capital through prudent asset management and allocation”. The CCPL brochure also describes the benefits of investing in private equity, pre-IPO investment trends and CCPL's specialty in the development of mining projects.
- “Crown Capital Partners Recent Transactions (2002-2003)”, which lists six oil and gas or mining companies that commenced trading in 2002 or 2003 on the American Stock Exchange.
- A four-page CCPL article entitled “Research Report: Focus on Gold And Canada”, which contains a discussion of why CCPL has “a very high level of investment confidence in *GOLD* as a commodity and *CANADA* as a country ...”.

[10] The CCPL website contained substantially the same information as the CCPL brochure. In addition, the website included a Managing Director's Letter, answers to frequently asked questions about the investment and Helpful Links to additional information on precious metals and commodities, oil and gas, business and financial news and private equity.

[11] Some of the investors contacted by CCPL had previously invested in shares of another company, SBS Interactive. According to one investor who testified at the hearing, the price for SBS Interactive shares had depreciated in the range of 75% from when he had purchased them. CCPL offered these investors shares in Karp in exchange for the sale of their SBS Interactive shares plus payment of additional funds. It is apparent that the CCPL salespersons had access to a list of SBS investors.

i. The Karp Investments

[12] Karp was incorporated in Canada in November 2002 as a wholly owned subsidiary of Claim Lake Resources Inc. (“Claim Lake”). Ulrich Kretschmar (“Kretschmar”), the former President of Claim Lake, testified that Karp was created to facilitate financing for gold

exploration on a property located in Ontario. Kretschmar testified that the Karp marketing material provided to investors by CCPL contained wholly incorrect information. Specifically, Kretschmar testified that it was never Karp's strategy to complete a private placement offering of over \$2 million with the intention of obtaining a stock exchange listing in 2004, as stated in the Karp Summary Fact Sheet. According to Kretschmar, the highlights of the Karp project described in the Karp Summary Fact Sheet were simply not correct. Kretschmar testified that he had never seen any of the marketing material before it was sent to investors and that he did not authorize it.

[13] Karp was the first stock that CCPL introduced to investors. Investors were told by CCPL salespersons that Karp was a small Canadian company with gold mining potential that was preparing for a public offering and would soon be listed on a stock exchange.

[14] Investors were provided a "Karp Summary Fact Sheet", which described Karp's strategy as including a private placement offering, issuing common shares at US \$1.50 with warrants convertible at US \$2.00; obtaining a stock exchange listing in 2004; and acquiring other junior exploration and production companies. The Karp Summary Fact Sheet also provided information on Project Highlights, Karp Management, Minimum Target Criteria and other background information on the company and the property.

[15] Some investors also received additional documents containing information about Karp. These included:

- a document entitled "Karp Mineral Resources Inc." with information on Karp's strategy, the Karp property, gold mineralization and Karp management, minimum target criteria, technology and business risks.
- "Karp Mineral Resources Update", which discusses Karp's recent work activity, looking ahead at Karp's entry into the public markets and investments in gold.
- "Karp Corporate Fact Sheet", which contains largely the same information as the "Karp Mineral Resources Inc." document referred to above. The Karp Corporate Fact Sheet lists CCPL as Karp's "Advisory Agent".

[16] Investors believed they were purchasing shares in Karp through CCPL at prices ranging from US \$1.00 to CAD \$3.00 per share in exchange for payments wired to a bank account in Toronto held by CCP (the "CCP Account"). Investors filled out Priority Applications for shares in Karp, with CCPL acting as Agent, and were provided with Statements of Account and Transaction Statements confirming their purchase of Karp shares.

[17] Their initial Karp investment included warrants that could be converted to common shares in Karp, usually at US \$2.00 per share. A number of investors subsequently exercised the warrants and purchased additional shares through CCPL at prices from US \$1.50 to US \$2.00 per share.

ii. The Legacy Investments

[18] Investors who purchased shares in Karp were later contacted by CCPL and offered another pre-IPO investment in a second Ontario mining company, Legacy. Investors were told that Karp shares had increased in value. They were not given the option of selling their Karp shares in exchange for cash. Rather, they were offered to have their Karp shares exchanged for shares in Legacy at a price of US \$2.50 per share. The sales pitch in almost every case required the investor to provide additional investor funds to purchase a larger quantity of Legacy shares.

[19] Investors were sent a Legacy Private Placement Term Sheet, printed on CCPL letterhead. The Term Sheet notes that the offering price is US \$2.50 per unit, with Series "A" warrants exercisable at US \$2.75 and Series "B" warrants exercisable at US \$3.00. According to the Term Sheet, the proceeds of the offering would be used:

To fund the continued exploration and development of Legacy's gold projects in China, United States and Canada. A portion of the capital raised may be allocated for additional property acquisition.

[20] Investors also received a CCPL Bulletin on Legacy, which contains overviews of the company and its strategy and provides details on projects which CCPL claims Legacy is involved with in China, the United States and Canada. Some investors were given copies of a Legacy press release dated June 7, 2004 with the title: "Significant Gold Values Encountered in Several Holes: Legacy Mining Corp. Provides Update on Drill Program for Gilchrist Project at Red Lake".

[21] The Legacy website, www.legacyminingcorp.com, claimed that Legacy was a mining company in existence for a number of years with gold mines in Ontario, Nevada and China.

[22] As with their investments in Karp, investors were asked to wire funds to the CCP Account in Toronto and were generally provided with Transaction Statements and Statements of Account confirming their purchases of Legacy shares at US \$2.50 per share. A few investors who had not previously invested in Karp also purchased Legacy shares, but most investors whom Staff were able to contact invested in both Karp and Legacy.

[23] Scott Boyle ("Boyle"), Manager of Investigations with Staff, testified that a great portion of the text of the Legacy website and other Legacy documents was taken from the websites and press releases of other public corporations. This included the information on all three Legacy projects described on the website (in Ontario, Nevada and China). Boyle also testified that he was unable to identify any of Legacy's listed officers and directors as having any history in the mining industry whatsoever, but, rather, he found that the bulk of the *curriculum vitae* information for two of the individuals was copied from *curriculum vitae* for officers or directors of another, publicly traded corporation.

[24] In total, Staff submit that \$513,000.29 was transferred into the CCP Account through 138 wire transfers that apparently were for investments in Legacy and Karp. Of this, Mellon submits we should consider only the amount sent by the 34 investors with whom Staff has been in contact. We have considered the evidence and we find that at least \$353,229.19 was transferred

into the CCP Account. This total includes wire transfers from the 34 investors who responded to Staff's inquiries and other wire transfers that reference investments in Karp or Legacy.

[25] Investors have been and are unable to sell or redeem their shares in Karp or Legacy. As a result they have lost the entirety of their investments.

B. CCPL's Investment in Karp and the Exploration of the Karp Property

[26] As noted, Karp is a Canadian corporation, a wholly-owned subsidiary of Claim Lake. At the relevant times, Claim Lake was an Ontario reporting issuer that traded on the Canadian Unlisted Board. Claim Lake was established by Kretschmar as a vehicle to raise funds to finance exploration of inactive mine sites. In November 2002, Claim Lake optioned the rights to a property in Northern Ontario and assigned those exploration rights to Karp.

[27] On January 6, 2003, Karp entered into a subscription agreement with CCPL, a purported Swiss entity, for a \$50,000 private placement investment in Karp. In exchange for the \$50,000 investment, CCPL received 2 million Karp shares or .025 cents per share which represented, depending on which witness was correct, 20 or 25% of the outstanding shares, plus 1 million warrants to be executed after one year.

[28] Karp received \$45,000 of the \$50,000. Karp's lawyer, John O'Donnell ("O'Donnell") retained the remaining \$5,000. The evidence establishes that Karp was paid in three tranches:

- a \$5,000 bank draft from Cahara Corp. ("Cahara") to secure the private placement in Karp. Richard Mellon is the sole director of Cahara Corp.;
- a \$2,000 draft from O'Donnell's trust account to Karp. O'Donnell received a \$2,000 cash deposit from Mellon to secure the private placement. O'Donnell then provided Karp with a draft for \$2,000 from his trust account; and
- a draft for \$43,000 received by O'Donnell in trust that came from the CCP Account.

[29] The Karp property had previously been the site of gold mining. According to Kretschmar, \$50,000 "was the minimum which would allow us to drill a couple of holes to see whether there was anything there" on the Karp property. After receiving funding from CCPL, a geological evaluation was done on the Karp property. Kretschmar testified that "[w]e found the vein. It didn't carry particularly high assay values. So, it was a technical success but it was not a success in terms of trying to raise further finances". After the initial drilling, CCPL did not exercise their option to further finance the Karp project.

[30] Kretschmar testified that he never corresponded or spoke directly with any representatives of CCPL. All communication regarding the Karp Subscription Agreement was through O'Donnell.

[31] Kretschmar testified that he knew nothing about any intention by CCPL to resell the Karp units it purchased through the Subscription Agreement.

C. Evidence at the Hearing

[32] We heard testimony from ten witnesses during the hearing.

[33] Boyle, a Manager of Investigations in the Enforcement branch of the Commission testified regarding the results of Staff's investigation in this matter.

[34] Kretschmar was the founder and president of Claim Lake and Karp. He testified about the creation of Karp and the Subscription Agreement between Karp and CCPL. Kretschmar also provided evidence regarding how he became aware of the Karp sales scheme.

[35] We heard from three investors who testified via videoconference from Europe. To protect their privacy, we refer to these investors throughout this Decision as "Investor A", "Investor B" and "Investor C". These investors testified as to their communications with CCPL representatives, the investments they made in Karp and Legacy and the impact their investments have had on their lives.

[36] Two of the Respondents' former employees testified. Sandra Vitulli ("Vitulli") was a receptionist with Mellon's company, Cahara during the material time. She testified regarding her work for the Respondents and her knowledge of CCPL. Robert Boss ("Boss"), a former telemarketer for CCP testified regarding his work for Elin at CCP marketing Karp and Legacy securities.

[37] O'Donnell, a lawyer, testified regarding his work for Claim Lake, Karp, Mellon and CCPL. His evidence included testimony regarding Karp's incorporation and particulars regarding the preparation and completion of the Subscription Agreement between Karp and CCPL.

[38] Two witnesses testified regarding the creation and hosting of websites and other marketing material. Jouari Santiago ("Santiago") testified regarding his web design and marketing work for Mellon on behalf of a number of companies, including CCPL and Legacy. Vladimir Graveran ("Graveran")'s company, NACTWS, hosted a number of websites, including the CCPL and Legacy websites, on instructions from Mellon.

[39] Neither Respondent called any witnesses to give evidence at the hearing. We draw no adverse inference, finding or conclusion from their decision not to testify or call witnesses.

II. THE ALLEGATIONS

[40] The allegations as summarized by Staff in their written submissions, are as follows:

- (a) the Respondents traded in securities without registration or acted as underwriters, and in circumstances where no exemptions were available to them, contrary to subsection 25(1)(a) of the Act, and contrary to the public interest;
- (b) the Respondents made:
 - (i) undertakings to potential investors regarding the future value or price of Karp and Legacy shares;

- (ii) representations to potential investors regarding Karp and Legacy shares being listed on a stock exchange,

with the intention of effecting trades in those securities, contrary to subsections 38(2) and (3) of the Act, and contrary to the public interest; and

- (c) the Respondents distributed securities of Karp and Legacy when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued by the Director to qualify the sale of these securities, contrary to subsection 53(1) of the Act, and contrary to the public interest.

III. PRELIMINARY ISSUES

A. The Commission's Jurisdiction in this Matter

[41] The purposes of the Act are (i) to provide protection to investors from unfair, improper or fraudulent practices, and (ii) to foster fair and efficient capital markets and confidence in capital markets (Act, *supra*, s. 1.1).

[42] The Karp and Legacy securities sold by CCPL were purchased by investors outside of Ontario. Notwithstanding this, there is a sufficient nexus to Ontario for the Commission to have jurisdiction over the CCPL investment scheme.

[43] Previous decisions have held that the Commission has jurisdiction over sales to investors located outside Ontario where respondents have engaged in acts in furtherance of trades in Ontario, particularly when their conduct negatively impacts upon the reputation of Ontario's capital markets. For example, the Commission has held that operating out of offices in Ontario, sending promotional investment material from Ontario, instructing investors to send payments to locations in Ontario and depositing funds in Ontario bank accounts provide sufficient nexus to Ontario for the Commission to have jurisdiction (see *Re Xi Biofuels Inc.* (2010), 33 O.S.C.B. 3077 at para. 204, *Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 at para. 52, and *Re Lett* (2004), 27 O.S.C.B. 3215).

Where the Commission becomes aware of distributions abroad by Ontario issuers that bring the reputation of Ontario's capital markets into disrepute, the Commission is of the view that it has the jurisdiction, for the due administration of the Act and in order to preserve the integrity of the Ontario capital markets, to exercise its cease trade powers or to take other appropriate actions against issuers, underwriters and other participants so distributing abroad.

(*Re Xi Biofuels Inc.*, *supra* at para. 215 citing Interpretation Note 1 to Former Commission Policy 1.5, "Distributions of Securities Outside of Ontario", s. 5)

[44] In this case, investors from outside Ontario were sold securities in Karp, an Ontario corporation, and Legacy, which was held out to investors as a private company located in Toronto. Investors in Karp and Legacy wired money to the CCP Account in Toronto. CCP was the operating name for Merax, a federally incorporated company with its head office and principal place of business in Toronto. The majority of the investment funds were then

transferred to bank accounts in Ontario, held by Ontario residents or corporations located in Ontario.

[45] The Commission also has jurisdiction over the individual Respondents in this matter, Elin and Mellon, both of whom reside in Ontario and worked in Toronto at the material time.

B. The Standard of Proof

[46] The standard of proof in this hearing is the civil standard of proof on a balance of probabilities. Evidence must be sufficiently clear, convincing and cogent to satisfy this standard (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 at paras. 40, 46).

C. Hearsay Evidence

[47] As we noted at the hearing, we have the discretion to admit relevant evidence that might not otherwise be admissible as evidence in a court, including hearsay evidence, under subsection 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990 c. S.22.

[48] In determining what weight, if any, to assign to evidence in this matter, we have considered the source of the evidence and whether the parties had an opportunity to cross-examine on that evidence.

IV. SUBMISSIONS OF THE PARTIES

A. Staff's Submissions

Breaches of subsection 25(1)(a)

[49] Staff submits that the Respondents traded in securities and/or, through CCPL, acted as underwriters in selling Karp and Legacy securities. Staff submits that although the Legacy securities sold to investors were fictitious, they were held out as genuine, and should therefore be treated as securities – or *de facto* securities; the Respondents should not be able to avoid liability under the Act by perpetrating a fraud.

[50] With respect to Mellon, Staff submits that he engaged in acts in furtherance of trades in Karp and Legacy securities, and therefore breached subsection 25(1)(a) of the Act. Staff submits that Mellon's acts in furtherance of trades included incorporating and acting as a director of Merax, which operated as CCP, opening the CCP Account, setting up a virtual office in Switzerland, using his company Cahara to lease office space and set up a mailbox with Mail Boxes Etc., arranging for the creation and design of the Karp and Legacy websites and providing Karp and Legacy materials to the Regus business centre in Switzerland. Staff also submits that Mellon received \$103,127.27 in funds that were originally deposited into the CCP Account and that his companies, Cahara, Melrich Investments ("Melrich"), and Forum Financial Group ("FFG"), received \$94,360, \$42,500 and \$12,000, respectively.

[51] With respect to Elin, Staff submits that he also breached subsection 25(1)(a) of the Act through his acts in furtherance of trades in Karp and Legacy securities. Staff submits Elin engaged in acts in furtherance of trades by incorporating Merax, which operated as CCP, and was one of its directors, opening the CCP Account, setting up virtual offices for CCPL, directing

that Karp and Legacy materials be sent to the Regus business centre in Switzerland and providing Boss with a call script and the names and telephone numbers of potential investors. Staff submits that Elin received \$128,746 in funds that originated in the CCP Account and that his girlfriend at the time, Nicolle Allocca received \$17,000.

[52] Staff further alleges that Mellon and Elin used the aliases “Robert Mitchell”, “Eric Davis”, “Andrew Keegan” and “Stephen Fletcher” to sell Karp and Legacy securities, or that they directed these individuals, or individuals using these names as aliases, to sell Karp and Legacy securities.

Breaches of subsection 53(1)

[53] Staff alleges that the Respondents also breached subsection 53(1) of the Act by participating in trades in Karp and Legacy securities which were distributions for which no prospectus was issued and no exemptions were available.

[54] Staff submits that the Respondents, personally and through CCPL, acted as underwriters in the distribution of Karp securities. Staff submits that the Respondents purchased shares in Karp through the Subscription Agreement with a view to distribution, and therefore that transaction was exempt from the prospectus requirement, pursuant to subsection 76(1)(r) of the Act. According to Staff’s submissions, the sales of Karp securities by CCPL to investors would qualify as distributions pursuant to subsection 72(6), and would therefore require a prospectus to be filed.

[55] Staff submits that the Respondents also breached subsection 53(1) through their trades in Legacy securities. In the case of Legacy, Staff submits there is no evidence that its securities were previously issued, so trades in Legacy qualify as a “distribution”.

Breaches of subsections 38(2) and 38(3)

[56] Staff submits that investors were given undertakings regarding the future value of Karp and Legacy securities. Staff specifically refers to telephone conversations between investors and representatives of CCPL regarding exercising warrants and acquiring further shares in Karp, during which CCPL representatives gave undertakings to investors that the shares would increase in value above the cost of exercising the warrants. Staff submits that as a result of these undertakings, the Respondents breached subsection 38(2) of the Act.

[57] Staff submits that the Respondents also breached subsection 38(3) of the Act by making prohibited representations to investors in Karp and Legacy. Staff submits that investors were told that Karp and Legacy would be going public in the near future and that some investors were specifically told that their shares would be listed on a particular exchange within a specific timeframe.

B. Elin’s Submissions

[58] Elin’s submissions are just that, submissions. He did not testify nor did he tender exhibits at the hearing. One must recognize his submissions are not evidence. In his submissions he, in summary, states that he was hired by CCPL in 2003 to run its telemarketing department to

generate leads, but never spoke with any clients and was not involved in sales. Elin stresses that there were never any sales of securities made at the 2323 Yonge St. premises, out of which he operated. Nor were any phone records produced by Staff that would suggest, let alone substantiate that sales were made. Further, Staff's witnesses Boss and Vitulli testified that they never saw, heard or knew of any such sales taking place in the offices of either Elin or Mellon.

[59] Elin submits he was informed of this job opportunity with CCPL by O'Donnell, and had no reason to question O'Donnell's actions or ethics since O'Donnell was a securities lawyer he had done business with previously.

[60] Elin submits that, to the best of his knowledge, the written marketing materials were provided by O'Donnell and stresses that no marketing materials were ever sent to investors. According to Elin, any mail that was sent out went in bulk to Europe, to be picked up by Trevor Baines ("Baines").

[61] Elin further submits that Staff has not proven that the aliases Robert Mitchell, Eric Davis or Andrew Keegan were used.

[62] In his submissions, Elin notes that he was registered with the Commission from 1987 through 2000. Elin also notes that his ability to respond to Staff's allegations has been limited as a result of issues with his health.

[63] Elin refers to the decision of the Commission in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600, which states that the role of the Commission is not to punish past conduct, but to restrain future conduct that is likely to be prejudicial to the public interest. Elin submits that for the past eight years, since 2003, he has had no contact in any way, shape or form, with anything to do with the capital markets in Ontario.

C. Mellon's Submissions

[64] Mellon did not testify. He tendered six exhibits. Like Elin, Mellon's submissions are a mixture of submissions, heavily interspersed with purported evidence he tenders on his behalf. His submissions are given full consideration in this decision, but his 'evidence' other than the exhibits will be given no weight. Mellon submits that the Commission has failed to deal with this matter in a fair and timely way. At the time of the hearing, it was eight years since Staff alleges the activity commenced and four-and-a-half years since the Statement of Allegations was filed on November 21, 2006.

[65] Mellon submits that he has never sold securities to the public, nor has he made representations that he acted personally or through any corporate entity as an underwriter or agent for Legacy, Karp or any other company.

[66] Mellon submits that the tendered evidence establishes he did not attempt to hide his identity in any way, but used his name and signature on corporate and bank documents. Mellon submits that he acted as directed by the directing minds of CCPL.

[67] Specifically, Mellon submits that the email address provided to Graveran, crowncapital2003@yahoo.co.uk, was established by someone in the United Kingdom. Mellon

submits that the only website domain name he had control over was that of his company Cahara, and Baines was the registrant and beneficial owner of the CCPL website, www.crowncapitalpartners.com. Mellon submits that the work he did regarding these websites, including instructing Graveran and Santiago to host and design the websites, providing the text for the websites and approving their design, was at the request of others, and that Mellon was merely acting as a “salesperson” or “middleman”.

[68] Mellon also submits that the CCP accounts were set up at the request of Baines and O’Donnell. Mellon submits that he never instructed investors to send funds to these accounts.

[69] Mellon denies that he created brochures, pamphlets, web pages, offering documents or other printed materials and submits that he merely passed on these documents and information on behalf of O’Donnell and Baines, neither of whom was capable of dealing with internet issues and technology.

[70] With regards to CCPL’s initial investment in Karp, Mellon submits that O’Donnell accepted funds from the Respondents because he was wary of accepting offshore funds from Baines.

[71] Mellon submits that all three investor witnesses testified that they dealt with Robert Mitchell and that one witness, Investor C, confirmed that Mellon is not Robert Mitchell.

[72] Mellon suggests that although Staff was unable to confirm the existence of CCPL and Legacy, a more thorough search, beyond solely Canadian records, and a more robust international investigation may well have provided other information.

[73] He submits Staff provided no evidence linking him to Claim Lake, Karp or Legacy. Further, O’Donnell listed himself as Transfer Agent for Karp. Although Staff alleges that over \$500,000 was improperly admitted to the CCP Account, Mellon submits that their witnesses established it was, at most, \$263,931.14.

[74] Mellon also points out that Staff’s own witnesses established that he worked on the second floor of 2323 Yonge St., not the sixth floor, were staff alleges the activity in question occurred.

[75] Mellon submits that his only involvement was acting as a consultant on the instructions of Trevor Baines, Wendy Baines and/or O’Donnell.

V. ANALYSIS

A. Did the Respondents breach subsection 25(1)(a) of the Act?

i. The Law

[76] Staff alleges that the Respondents’ conduct violated subsection 25(1)(a) of the Act. Subsection 25(1)(a) of the Act states:

25. (1) No person or company shall,

(a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

[77] Under subsection 1(1) of the Act:

“trade” or “trading” includes,

(a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, ...

...

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[78] An act is an ‘act in furtherance of a trade’ if it has a sufficiently proximate connection to an actual trade (*Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47). Activities that have been cited as examples of ‘acts in furtherance of trades’ include (a) distributing promotional materials concerning potential investments; (b) issuing and signing share certificates; (c) preparing and disseminating materials describing investment programs; (d) preparing and disseminating forms of agreements for signature by investors; (e) receiving consideration or other benefit from an eventual sale; (f) setting up a website that offers securities to investors over the internet or that is designed to excite the reader about the company’s prospects; and (g) accepting investor funds for the purpose of an investment (see *Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 at paras. 80, 87-88; *Re First Federal Capital (Canada) Corp.* (2004), 27 O.S.C.B. 1603 at para. 45; *Re American Technology Exploration Corp.* (1998), L.N.B.C.S.C. 1 (QL) at 9; *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 at para. 133).

[79] Staff alleges that the Respondents traded in securities and/or, using CCPL, acted as underwriters in the sale of Karp and Legacy securities.

ii. Analysis

Investments in Karp and Legacy securities

[80] We were provided with evidence that more than 70 individuals transferred funds into the CCP Account to purchase shares in Karp and Legacy through CCPL. Staff received responses from 34 investors, most of whom invested in both Legacy and Karp. The evidence shows that over \$500,000 was deposited into the CCP Account through wire transfers from individuals between late 2003 and early 2004.

[81] During the hearing, we heard from three investors who testified that they were contacted by CCPL representatives who offered them investment opportunities in Karp and Legacy.

[82] Investor A testified that he made two investments in Karp after he was contacted by Robert Mitchell of CCPL. He purchased 3000 Karp shares at US \$1.50 per share for a total of US \$4,500 in October 2003. In January 2004, he exercised “warrants” he received with his first

investment and purchased a further 3000 shares in Karp at a price of US \$2.00 per share, totalling US \$6,000. In connection with these investments, Robert Mitchell provided Investor A with Karp marketing materials, including the Karp Summary Fact Sheet and the list of Crown Capital Partners Recent Transactions.

[83] Investor A testified that after his second Karp investment, Robert Mitchell contacted him again about another investment opportunity in Legacy shares. Investor A was told he was making a US \$25,000 investment in Legacy shares when he invested through CCPL in March 2004. This investment in Legacy came from the sale of his Karp shares, which he understood to then be at a value of US \$18,000, plus an additional investment of US \$7,000.

[84] In total, Investor A wired US \$17,500 to the CCP Account.

[85] Investor B testified that he was initially contacted by Eric Davis in October 2003 about an investment in Karp securities. Investor B had previously invested in shares in SBS Interactive, which had decreased in value substantially since his initial investment. He testified that Eric Davis told him that he could get his money back and offered him an investment opportunity in Karp. After this initial conversation, Eric Davis sent Investor B marketing material that included the CCPL Research Report: Focus on Gold in Canada and the Karp Summary Fact Sheet.

[86] Investor B made his first investment in Karp in November 2003. He understood that CCPL sold 10,000 units of the shares he held in SBS Interactive at a price of US \$1.10 per unit, for a total of US \$11,000. Investor B then applied the US \$11,000 from the sale of the SBS Interactive securities plus an additional payment of US \$1,750 to his purchase of 8,500 shares in Karp at US \$1.50 per share.

[87] In February 2004, Investor B made a second investment in Karp. CCPL confirmed with Investor B that it sold his remaining 5,000 shares in SBS Interactive for US \$12,500. Investor B then sent an additional US \$4,500 to fund the purchase of 8,500 Karp shares at US \$2.50 per share.

[88] Later, in April 2004, Eric Davis convinced Investor B to exchange his Karp shares for shares in Legacy. Investor B was told that Karp shares had gone up in value to US \$2.50 per share and his investment was now worth US \$42,500. Without making any additional payment, Investor B understood that his shares in Karp were sold through CCPL and the proceeds of that sale were used to fund a US \$42,500 investment in Legacy shares.

[89] Investor B's payments for his investment in Karp shares were made through wire transfers to the CCP Account in amounts of US \$1,750 for his first investment and US \$4,500 for his second investment.

[90] Investor C testified that he was contacted in late 2003 or early 2004 by Robert Mitchell of CCPL. Investor C testified that he dealt almost completely with Robert Mitchell regarding his investments through CCPL, but spoke with two others at CCPL on separate occasions, Andrew Keegan and a woman (he testified that the name "Isabella Marcucci" sounded right). Robert Mitchell sent Investor C information on Karp and CCPL, including the Karp Summary Fact sheet and a list of Crown Capital Partners Recent Transactions, 2002-2003.

[91] Investor C made his first investment in Karp securities in January 2004, when he purchased 1,000 Karp shares at US \$1.50 per share for a total of US \$1,500. Investor C understood that 'warrants' were included in this investment, but he was not sure of what that meant when he first invested.

[92] In March 2004, Investor C received a call from Robert Mitchell, who informed him that Karp was going to be taken over by Legacy and that he should take advantage of this by converting his warrants to common shares before the take-over. Investor C converted his Karp warrants to shares and purchased 1,000 additional Karp shares at US \$2.00 for US \$2,000.

[93] Subsequently, Robert Mitchell sent Investor C materials and website information for Legacy, and Investor C decided to make an additional investment in Legacy shares. Investor C believed he had made a profit through his Karp shares, which was told were now worth US \$3.25 per share (up from the US \$1.50 and US \$2.00 per share values at which he bought the securities). He testified that he used savings and took out a small loan to make an investment in Legacy. After his Karp shares were sold by CCPL for an apparent US \$6,500, Investor C understood he owed an additional US \$31,000 to fund the purchase of 15,000 Legacy shares at US \$2.50 per share. Investor C testified that he made one payment of US \$13,000 and authorized a second payment for the balance owed, but had second thoughts and stopped payment on the balance due.

[94] In total, Investor C transferred US \$16,500 to the CCP Account for investments in Karp and Legacy.

[95] In addition to the testimony from the three investor witnesses, Staff received information and documentation from 31 other investors in Karp and Legacy who invested through CCPL. Investors provided copies of email discussion with representatives of CCPL, wire transfer instructions, transaction statements, statements of account and copies of CCPL, Karp and Legacy marketing material which were provided to investors by CCPL.

[96] We were presented with evidence of additional wire transfers into the CCP Account, mostly from individuals located in Europe. Other than for the 34 investors who responded to Staff, we were not provided with evidence that these other wire transfers were investments in Karp and Legacy. The only materials in evidence with respect to these individuals are the banking documentation regarding their wire transfers. We accept that the wire transfers that make references to Karp or Legacy were intended to be investments in those securities through CCPL. We have considered the evidence and have determined that, in total, at least \$353,229.19 was invested in the Karp and Legacy schemes through wire transfers into the CCP Account. This total includes investments made by the 34 investors with whom Staff was in contact as well as the wire transfers from individuals that make specific reference to Karp or Legacy securities.

[97] The evidence shows that none of CCP, CCPL, Karp or Legacy was registered with the Commission, and there were no registration exemptions available for the issuance of Karp and Legacy shares.

[98] Investors were fraudulently induced to make payments in return for securities in Karp and Legacy that were issued through CCPL in the absence of any registration exemptions available under Ontario securities law.

[99] The question now is whether the Respondents' traded in the securities of Karp and Legacy.

The Respondents' involvement in trades in Karp and Legacy securities

[100] The CCPL payment instructions form provided to investors directs them to send funds by wire transfer to the CCP Account, held at TD Canada Trust in Toronto. Elin and Mellon opened the CCP Account on May 29, 2003 in the name of Merax, operating as CCP. Mellon is listed as the business contact for this account and the address associated with the account is 204-2323 Yonge St., Toronto. The Respondents are the only two CCP directors listed in the account documentation.

[101] Both Mellon and Elin incorporated Merax, which operated as CCP, and were the two directors of the company. "CCP" was used interchangeably with "CCPL" in communications with investors. Merax's address was 2323 Yonge St., Suite 204, Toronto, the same address out of which Mellon worked.

[102] The evidence shows that Mellon and Elin were involved in setting up virtual offices, mailboxes and websites associated with Karp, Legacy and CCPL.

[103] Regus business centre, located in Switzerland, provided virtual office services for CCPL in Geneva. Documents from Regus list "Alex Elin & Richard Mellon" as the client names associated with CCPL. Included in the documentation setting up the account with Regus are photocopies of Elin's and Mellon's passports.

[104] A Mail Boxes Etc. mailbox was set up for CCP at an address not far from the Respondents' offices in Toronto. Elin is named as the customer in the agreement setting up the mailbox and the address listed for contact information is "2323 Yonge St., #204". A copy of Elin's driver's licence is included in the Mail Boxes Etc. documentation.

[105] Santiago testified that Mellon provided him with instructions regarding the creation and design of websites, including for CCPL, Legacy and Karp. Santiago designed the CCP website for Mellon, who provided him with the text to be used on the website. He testified that Mellon communicated that the purpose of the CCP website design was to present it as a wealth management company. There was a focus on European investors, so the images were targeted at them (for example, the image of a US dollar bill was replaced with other currency). Santiago testified that Mellon provided him with the address information and that Mellon also gave subsequent instructions to remove or edit the address information.

[106] Santiago also designed the Legacy website based on instructions from Mellon. He testified that he understood the website was being designed for one of Mellon's clients. Mellon provided all the content for the website to Santiago, including press releases. After the initial website was created, Santiago then instructed Mellon and Vitulli on how to upload press releases to the website on their own.

[107] In addition to websites, Santiago also designed the CCPL brochure. Mellon provided him instructions on the content of the CCPL brochure and directed that it be created on European stock paper, rather than paper with dimensions commonly used in North America. All payments for Santiago's design services were made by Mellon, by cash or cheque.

[108] The websites designed by Santiago for Mellon were hosted by Graveran's company, NACTWS. Graveran testified that Mellon provided him with a list of names and asked Graveran to provide email addresses for those names, which would be associated with CCP. He asked that the five emails (andrew@crowncapitalpartners.com, robert@crowncapitalpartners.com, alex@crowncapitalpartners.com, richard@crowncapitalpartners.com and inquiries@crowncapitalpartners.com) be forwarded to the email address crowncapital2003@yahoo.co.uk.

[109] Mellon provided Graveran with the username and password information for the domain name "crowncapitalpartners.com". The registrant of the domain name was "Molyneux Roche Corporation" and the administrative contact was "J T R Baines".

[110] Graveran testified that only Mellon provided him with instructions regarding the websites for Cahara, CCP, Legacy and FFG. All invoices for hosting services were billed to Mellon's company, Cahara, and Graveran testified that he was always paid by Cahara.

[111] Mellon and Elin worked out of offices on the second and sixth floors of 2323 Yonge St., Toronto during the relevant time. We heard from two witnesses who worked out of the office space used by Mellon and Elin at 2323 Yonge St., Vitulli and Boss.

[112] Sandra Vitulli was employed by Mellon as a receptionist for Cahara on the second floor of 2323 Yonge St. Other than Mellon, she was the only person employed by Cahara. Vitulli testified that she sent out emails from the email address inquiries@crowncapitalpartners.com. She testified that she never spoke with investors over the phone, but would send them emails on behalf of CCP on instructions from Elin or Mellon and would provide them with attachments that she received from Mellon or Elin.

[113] Vitulli testified that she did not know where Elin worked, but that she would sometimes drop things off on the sixth floor of 2323 Yonge St. and would see him there. She testified that Elin provided her with instructions to send emails or brochures. Elin, and sometimes Mellon, instructed her to send boxes of CCPL brochures to an address in Switzerland. According to Vitulli, she would probably send 25 to 50 brochures in one month.

[114] Vitulli recalled telemarketers working for CCP. She did not know their names, or who they were calling, but remembers that they worked in the mornings. Vitulli did not recognize any of the names of the CCPL representatives that investors listed as contacts when they were put to her during her examination by Staff. She testified that she recalled that Mellon or Elin would give instructions to send emails on behalf of other people, such as Robert Mitchell. We were presented in evidence with an email signed by "Isabella Marcucci the Assistant to Robert Mitchell", which was sent to a CCPL investor.

[115] Vitulli admitted to using the aliases "Isabella Marcucci and Bianca Mastracci". She testified that she used these aliases because she was not comfortable giving her real name to people she did not know and that she told Mellon and Elin she was using these aliases.

[116] Vitulli testified that the cheques she received from CCP were reimbursements for supplies she purchased.

[117] Robert Boss was hired by Elin in 2003 to work as a telemarketer for CCP. Boss testified that he worked as a “qualifier” calling potential investors to see if they were interested in investing. Boss worked directly for Elin and took instructions from him.

[118] Boss worked out of the sixth floor of 2323 Yonge St. He was paid a salary by CCP, which he would pick up from the sixth floor office, or on occasion, from the office on the second floor at 2323 Yonge St. Boss testified that he generally worked mornings because they were primarily calling people in Europe.

[119] Elin provided Boss with the names and telephone numbers for the people in Europe whom he was to call. Boss was also provided with a script outlining what he was to say over the telephone. Boss would tell investors that CCP was a private equity firm doing private placements for junior mining companies and that there was an opportunity for investors to make money with Karp, a junior mining company affiliated with Claim Lake. He would direct people he spoke with on the phone to the website, if asked. If investors held shares in SBS Interactive, Boss would tell them that CCP might be able to help them out. After getting leads from potential investors, Boss would send them information or call them again.

[120] The names Boss used when speaking on the telephone changed with every call, and he assumed that others at CCP also used aliases. Boss testified that he did not recall using the specific names provided by investors for the CCPL representatives with whom they dealt.

[121] Funds from investors in Karp and Legacy were initially received into the CCP Account, over which the Respondents had control. Investor funds from the CCP Account were then generally transferred to a Merax bank account, also under the control of the Respondents, before being finally distributed. The Respondents benefitted from the funds raised from investors in Karp and Legacy in a number of ways. Cheques distributing the bulk of the proceeds of funds from investors were written from the Merax bank account to Mellon and Elin personally, to Mellon’s companies, Cahara, Melrich and FFG, and to Elin’s girlfriend at the time.

[122] As discussed in the Background section, above, the Respondents were also involved in the Karp subscription agreement between CCPL and Karp. The Respondents provided money on behalf of CCPL to purchase the Karp shares. Of the \$50,000 that went towards the purchase of Karp shares, \$5,000 came from a bank draft from Cahara and \$43,000 came from the CCP Account. O’Donnell testified that he received the remaining \$2,000 as a cash deposit from Mellon.

[123] Although there is some evidence regarding the involvement of a Trevor Baines and Wendy Baines in this scheme, we conclude that if he/they were involved, it does not change our analysis of the involvement of Mellon and Elin.

[124] The Respondents were not registered with the Commission during the relevant time when investors were sold Karp and Legacy securities.

[125] The evidence, both direct and circumstantial, is overwhelming. It clearly establishes on a balance of probabilities, that each of Mellon and Elin were not only involved, but were the directing minds of this fraudulent scheme to trade, sell and distribute the Karp and Legacy securities (or in the case of Legacy securities, it could well be that they were purported securities) contrary to section 25(1).

B. Did the Respondents breach subsection 53(1) of the Act?

i. The Law

[126] Subsection 53(1) of the Act states:

53. (1) Prospectus required – No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

ii. Analysis

[127] No prospectus was issued for the trades in Karp and Legacy securities through CCPL.

[128] The trades in Karp and Legacy securities, as described above, were distributions for which no prospectus exemptions were available. The Respondents were involved in an initial purchase of Karp securities by CCPL through the January 2003 subscription agreement, however their trades in Karp securities through sales to investors were nonetheless distributions.

[129] We find the evidence does not clearly establish on a balance of probabilities that the Respondents acted as underwriters as alleged by Staff. Investors were led to believe they were making pre-IPO investments in Karp and Legacy securities through CCPL, both in their initial purchases and their exercises of warrants. Investors were told that CCPL was a private equity firm involved in private placements for junior mining companies. Although fraudulent, sales of Karp and Legacy securities were marketed to investors as being distributions in substance.

[130] We find that the trades in Legacy and Karp securities were distributions made without a prospectus and without a prospectus exemption, and that the Respondents therefore breached subsection 53(1) of the Act.

C. Did the Respondents breach subsection 38(2) of the Act?

i. The Law

[131] Subsection 38(2) of the Act states:

(2) Future value – No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of a security.

[132] In *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727, the Commission considered subsection 38(2) and stated at paras. 167-170:

... the ASC stated [in *Re National Gaming Corp.* (2000), 9 A.S.C.S. 3570] that in determining whether a representation amounted to an undertaking, the context of the statement must be considered, and the “undertaking” must be given a “functional interpretation” in keeping with the objective of protecting investors. Accordingly, the ASC held it was not necessary to show that all the elements of an enforceable contract existed. ...

In *Securities Law and Practice* (Borden Ladner Gervais LLP, *Securities Law and Practice*, 3rd ed., looseleaf (Toronto: Thomson Canada Limited, 2007) (WLeC)), it is stated that: “the prohibition in s. 38(2) appears to be justifiably narrow since trading in securities is necessarily based on statements concerning the future value or price of securities; as long as they are not construed as undertakings, s. 38(2) would not be breached.”

We agree with the approach of the ASC in *National Gaming* and the statement of the law from *Securities Law and Practice*.

In our view, a mere representation as to future value is not an “undertaking” within the meaning of subsection 38(2) of the Act. Prohibiting all representations as to the future value of securities would ignore the reality of the marketplace.

ii. Analysis of undertakings made to investors

[133] Boss testified that during his phone calls to potential investors in Europe, he told them that Legacy and Karp were looking to go public.

[134] Investor A testified that Robert Mitchell induced him to purchase units in Karp in October 2003 by telling him it would go public in the next two to four months and as soon as it happened he could sell the stock for a “nice profit”. We also heard evidence that Robert Mitchell told Investor A to exercise his Karp warrants because “it was already clear that the IPO would happen at \$3” (Hearing Transcript, January 19, 2011 at p. 3).

[135] Investor B testified that Eric Davis told him that Karp was involved in a project that had a very high rate of success and that “these shares will climb up” (Hearing Transcript, January 20, 2011 at p. 20).

[136] Investor C also testified that Robert Mitchell told him that “they were going to make an initial public offering and the share prices [of Karp] were expected to rise from \$1.50 to \$4” within three to four months (Hearing Transcript, January 20, 2011 at p. 54-55). In March 2004, Robert Mitchell told Investor C that “they had a takeover offer of \$3.25 for the shares in Karp” (Hearing Transcript, January 20, 2011 at p. 58). Investor C told Staff that CCPL was “recommending that investor take advantage of their option to buy an additional equal number of shares at \$2.00 before the takeover”.

[137] Investor C testified that Robert Mitchell told him “the shares were expected to rise from \$2.50 to \$7 or \$8” (Hearing Transcript, January 20, 2011 at p. 71). Further, in a conversation on October 15, 2004, Robert Mitchell told Investor C that “there is something going on right now with Legacy that is quite positive, as I mentioned to you earlier, there’s rumours out there regarding a takeover”.

[138] In addition to the testimony we heard from investor witnesses, we were presented evidence in the documents Staff obtained from investors that they were given representations as to the future value of Karp and Legacy securities.

[139] Further, the Karp Summary Fact Sheet states that:

... Karp Minerals has adopted the following target criteria for the property:

- A payback of capital investment in two years
- Double digit returns on investment (minimum)

[140] We are not satisfied that the representations as to the future value of Karp and Legacy securities by CCPL representatives constituted undertakings as to the future value of securities as alleged by Staff.

D. Did the Respondents breach subsection 38(3) of the Act?

i. The Applicable Law

[141] Subsection 38(3) of the Act states:

(3) Listing – Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representations, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system, unless,

(a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any stock exchange or quoted on any quotation and trade reporting system; or

(b) the stock exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to the representation.

ii. Analysis of representations made to investors

[142] Robert Mitchell told Investor A and Investor C when they made their initial investments that Karp would go public within two to four months. They and other investors were provided

the Karp Summary Fact Sheet, which states under the heading “Strategy”: “Company to Obtain a Stock Exchange Listing 2004”.

[143] Boyle provided evidence that other investors contacted by Staff were given further representations that Karp would go public.

[144] The evidence does not support a claim that there was ever any actual intention that Karp would go public. On the contrary, Kretschmar testified that there was no plan for Karp to go public. O’Donnell testified that:

... the company would have had to have financing. If the company had financing, it could go forward. There was no way that a company could go forward with an IPO or going public without having financing in place. You must have, in order to get a prospectus cleared, you must have a business plan and you must have financing in place to carry out the business plan. This company had no financing. So, once the financing stopped, then there was no possibility of this company going public.

(Hearing Transcript, January 21, 2011 at p. 61-62)

[145] Regarding Legacy shares, Investor C testified that Robert Mitchell told him Legacy shares would be listed on the New York Stock Exchange in the first quarter of 2005.

[146] Investor A similarly testified that Robert Mitchell represented to him that Legacy was “a successful company ... which would go public very soon” (Hearing Transcript, January 19, 2011 at p. 17). Further documentary evidence was provided of similar representations made to investors that Legacy would go public.

[147] We are satisfied that the evidence clearly establishes that representations were made as to the stock being ‘listed on a recognized stock exchange’. This is part of the whole fraudulent scheme which Mellon and Elin directed or at the very least played a very significant active role and from which they directly or indirectly received the bulk of the proceeds of the sale of securities.

VI. CONCLUSION

[148] Accordingly, we find that the Respondents acted contrary to the public interest and contravened Ontario securities law through the following breaches of the Act:

- (a) the Respondents traded in securities without being registered, contrary to subsection 25(1)(a) of the Act;
- (b) the Respondents made illegal distributions of securities, contrary to subsection 53(1) of the Act; and
- (c) the Respondents made illegal representations that securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act.

[149] The Respondents are directed to contact the Office of the Secretary within 15 days to set a date for a sanctions and costs hearing, failing which a date will be set by the Office of the Secretary.

Dated at Toronto this 12th day of December, 2011.

“Patrick J. LeSage”

Patrick J. LeSage

“Sinan O. Akdeniz”

Sinan O. Akdeniz