



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

-AND-

IN THE MATTER OF
MAITLAND CAPITAL LTD., ALLEN GROSSMAN,
HANOCH ULFAN, LEONARD WADDINGHAM,
RON GARNER, GORD VALDE, MARIANNE HYACINTHE,
DIANNA CASSIDY, RON CATONE, STEVEN LANYS, ROGER MCKENZIE,
TOM MEZINSKI, WILLIAM ROUSE and JASON SNOW

REASONS AND DECISION
with respect to Tom Mezinski
(Section 127 of the *Securities Act*)

Hearing: February 15, 2012

Reasons: July 6, 2012

Panel: Edward P. Kerwin – Commissioner

Counsel: Derek J. Ferris – For Staff of the Ontario Securities
Commission

– No one appearing for Tom
Mezinski

TABLE OF CONTENTS

I. INTRODUCTION	1
A. Background	1
B. History of Proceedings	1
II. PRELIMINARY ISSUES	4
A. Failure of Mezinski to attend the proceedings	4
B. The Alberta Securities Commission Proceedings	5
III. THE ISSUES	5
IV. EVIDENCE	5
A. The Allegations against Mezinski	5
V. ANALYSIS	8
A. Did Mezinski trade in securities without being registered, contrary to section 25 of the Act? 8	
i. Submissions	8
ii. The Law	8
iii. Analysis	9
B. Did Mezinski engage in distributions of securities of Maitland when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53 of the Act?	10
i. Submissions	10
ii. The Law	10
iii. Analysis	11
C. Did Mezinski, with the intention of effecting a trade in securities of Maitland, make misleading representations to investors, including representations regarding the future listing and future value of Maitland shares contrary to section 38 of the Act?	11
i. Submissions	11
ii. The Law	12
iii. Analysis	12
VI. CONCLUSION	12

I. INTRODUCTION

A. *Background*

[1] This proceeding arises out of a Notice of Hearing issued on January 24, 2006, by the Ontario Securities Commission (the “**Commission**”) and a Statement of Allegations filed by staff of the Commission (“**Staff**”) on the same day. The Statement of Allegations contained allegations against Steven Lanys (“**Lanys**”), Tom Mezinski (“**Mezinski**”), Maitland Capital Ltd. (“**Maitland**”), Allen Grossman (“**Grossman**”), Hanoch Ulfan (“**Ulfan**”), Leonard Waddingham (“**Waddingham**”), Ron Garner (“**Garner**”), Gord Valde (“**Valde**”), Marianne Hyacinthe (“**Hyacinthe**”), Dianna Cassidy (“**Cassidy**”), Ron Catone (“**Catone**”), Roger McKenzie (“**McKenzie**”), William Rouse (“**Rouse**”) and Jason Snow (“**Snow**”) (collectively the “Maitland Respondents”).

[2] Staff alleges that between November 2004 and November 2005, inclusive, Maitland operated a “boiler room” from two locations in Toronto, Ontario and raised approximately \$5.5 million through the sale of Maitland shares to approximately 1,200 investors across Canada and in other countries. Staff alleges that Maitland hired salespersons to telephone investors and sell Maitland shares to them, such salespersons being paid a commission ranging from 17% to 20% of the amounts paid for the purchase of Maitland shares.

[3] The specific allegations relating to Mezinski include the following:

- i. Mezinski traded in securities as a salesperson for Maitland shares and received a commission on the sale of Maitland shares that he sold;
- ii. Mezinski was not registered with the Commission in any capacity, and therefore traded in securities contrary to s. 25 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) and contrary to the public interest;
- iii. No prospectus receipt had been issued to qualify the sale of Maitland shares by Mezinski, contrary to s. 53 of the Act and contrary to the public interest; and
- iv. Mezinski made misleading representations to investors, including representations regarding the future listing and future value of Maitland shares with the intention of effecting sales of Maitland shares contrary to s. 38 of the Act and contrary to the public interest.

B. *History of Proceedings*

[4] On January 24, 2006, the Commission ordered pursuant to subsection 127(1) and 127(5) of the Act that (i) all trading by Maitland and its officers, directors, employees and/or agents in securities of Maitland cease; (ii) the Maitland Respondents cease trading in all securities; and (iii) any exemptions in Ontario securities law not apply to the Maitland Respondents (the “**Temporary Order**”).

[5] As stated above, the Commission issued a Notice of Hearing on January 24, 2006, advising the Maitland Respondents that a hearing would be convened on February 8, 2006, to consider whether it was in the public interest for the Commission to make an Order (i) extending the Temporary Order until the conclusion of the hearing; (ii) that all trading in Maitland securities be ceased; (iii) imposing sanctions against the Respondents under subsection 127(1) of the Act; and (iv) for the payment of costs by the Maitland Respondents pursuant to section 127.1 of the Act.

[6] Mezinski did not attend the hearing on February 8, 2006, and did not attend or participate in any subsequent hearings before the Commission in this proceeding.

[7] At the hearing on February 8, 2006, Staff filed an affidavit of Ian MacIntyre, sworn February 6, 2006, as evidence that a copy of the Notice of Hearing, the Temporary Order, and the Statement of Allegations had each been personally served on Mezinski on February 3, 2006.

[8] The Temporary Order was extended by orders of the Commission on February 8, 2006, February 28, 2006, April 19, 2006, May 29, 2006, and June 28, 2006.

[9] On May 19, 2006, the Commission authorized the commencement of a quasi-criminal proceeding under section 122 of the Act against Maitland, Grossman (who was the president and director of Maitland), and Ulfan (who was the secretary-treasurer of Maitland) (the “**Section 122 Proceeding**”).

[10] On September 12, 2006, the Commission ordered that (i) the Temporary Order be extended until the conclusion of the “Hearing”, (ii) proceedings against the remaining Maitland Respondents be adjourned pending completion of the Section 122 Proceeding, and (iii) within four to eight weeks of judgment being rendered in the Section 122 Proceeding, a hearing be scheduled before the Commission in connection with the section 127 proceeding.

[11] On March 23, 2011, following a trial in the Section 122 Proceeding, Justice Sparrow of the Ontario Court of Justice found Maitland, Grossman and Ulfan guilty of breaches of subsections 25(1), 38(2), 38(3), 53(1), 122(1)(b) and 122(3) of the Act. On May 4, 2011, Justice Sparrow sentenced each of Grossman and Ulfan to 21 months in jail and two years of probation, and fined Maitland \$1 million.

[12] On May 27, 2011, Staff amended the Notice of Hearing and Statement of Allegations to request an inter-jurisdictional enforcement order under subsection 127(10) of the Act in reliance upon previous decisions of the Alberta Securities Commission, the Saskatchewan Financial Services Commission (the “SFSC”) and convictions of the Ontario Court of Justice involving Maitland and some of the Maitland Respondents. None of the amendments to the Statement of Allegations concerned Staff’s allegations against Mezinski.

[13] By Order of the Commission issued on June 28, 2011, the proceeding in respect of certain Maitland Respondents was split into three parts, which would proceed as follows:

- i. The proceeding against Maitland, Grossman and Ulfan would be dealt with by a hearing in writing;

- ii. The hearing with respect to Waddingham, Cassidy, Valde, Garner, Snow, Catone, McKenzie and Hyacinthe would be adjourned to September 2, 2011, to consider possible agreed statements of facts and appropriate sanctions, if any; and
- iii. The hearing in respect of Lanys, Rouse and Mezinski would be adjourned to September 2, 2011, to set a date for a merits hearing.

[14] By Order of the Commission issued September 2, 2011, the merits hearing in respect of Lanys, Rouse and Mezinski was ordered to commence on February 15, 2012, and continue on February 16 and 17, 2012.

[15] On September 2, 2011, Staff filed a Notice of Withdrawal with respect to the allegations against Snow, Catone, McKenzie and Hyacinthe.

[16] On February 15, 2012, Staff filed a Notice of Withdrawal with respect to the allegations against Rouse.

[17] Lanys was present at the hearing on February 15, 2012, and was represented by counsel, Jerry Herszkopf. Mezinski was neither present nor represented at the hearing.

[18] At the commencement of the hearing on the merits on February 15, 2012, Staff filed an "Agreed Statement of Facts Between Staff of the Enforcement Branch and Steven Lanys" dated February 14, 2012. Staff requested the hearing with respect to Lanys proceed as a sanctions hearing for the purpose of considering whether it is in the public interest for the Commission to make an Order under subsection 127(1) of the Act imposing sanctions against Lanys as a result of his admitted contraventions of Ontario securities law. Counsel for Lanys agreed there was no need to conduct a separate sanctions hearing with respect to his client, and consented to the Panel hearing submissions on sanctions with respect to the conduct and contraventions of the Act by his client.

[19] I ruled that the hearing with respect to Lanys may proceed as a sanctions hearing. A separate Order and Reasons for Order will be issued with respect to the Commission's decision with respect to the appropriate sanctions in respect of Lanys. My ruling converting the hearing to a sanctions hearing pertained only to Lanys and did not apply to Mezinski. The hearing in respect of Mezinski continued as a hearing on the merits.

[20] At the conclusion of Staff's evidence and submissions with respect to the allegations against Mezinski, Staff suggested that I hear submissions on the sanctions to be applied against Mezinski in the event the Commission finds that Mezinski acted contrary to the Act and/or contrary to the public interest. Staff submitted that I was not required to make a final determination on the merits of the allegations against Mezinski before hearing Staff's submissions on sanctions. I agreed to hear Staff's submissions on sanctions with respect to Mezinski on the understanding that I had not made and would reserve my decision with respect to whether Mezinski has acted contrary to the Act and/or contrary to the public interest.

[21] These are my reasons with respect to the issue of whether Mezinski acted contrary to the Act and/or contrary to the public interest.

II. PRELIMINARY ISSUES

A. Failure of Mezinski to attend the proceedings

[22] As noted above, Mezinski did not attend the hearing and did not participate, either in person or through an authorized representative, at any stage of these proceedings. Staff submit that Mezinski was given proper notice of these proceedings and the Commission should proceed in his absence.

[23] Staff filed an Affidavit of Service sworn February 3, 2006, as evidence that Mezinski was personally served with the Notice of Hearing, the Temporary Order and Staff's Statement of Allegations. In addition, Staff filed an affidavit sworn February 10, 2012, stating that Staff attempted to serve Mezinski with copies of their hearing briefs on February 7, 2012 and February 8, 2012. The affidavit states that on February 7, 2012, a man identifying himself as Mezinski's father advised the affiant that Mezinski was not currently living in Canada. On February 8, 2012, a woman identifying herself as Mezinski's mother advised the affiant that she did not know where Mezinski was residing or how Staff might contact him.

[24] Subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA") provides that a tribunal may proceed in the absence of a party when that party has been given adequate notice. That section provides as follows:

Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[25] I note the following passage from *Administrative Law in Canada*:

Where a party who has been given proper notice fails to respond or attend, the tribunal may proceed in the party's absence and the party is not entitled to further notice. All that the tribunal need establish, before proceeding in the absence of the party, is that the party was given notice of the date and place of the hearing. The tribunal need not investigate the reasons for the party's absence.

(Sara Blake, *Administrative Law in Canada*, 5th ed. (Markham, Ont.: LexisNexis Butterworths, 2011) at p. 32)

[26] I find that Mezinski was served a copy of the original Notice of Hearing and Statement of Allegations, together with a copy of the Temporary Order. His failure to attend the initial hearing in this matter on February 8, 2006, and his subsequent failure to advise the Commission of changes to his address for service should not accrue to his benefit. I am satisfied that Mezinski had adequate notice of this proceeding and that I am entitled to proceed in his absence in accordance with subsection 7(1) of the SPPA.

[27] In making this finding, I am conscious of the fact that there is no evidence to show that Mezinski was served the Amended Statement of Allegations filed May 27, 2011. However, as

stated above, the amendments to the Statement of Allegations did not alter the original allegations made by Staff against Mezinski, and therefore he is not prejudiced by Staff's inability to serve him with the Amended Statement of Allegations.

B. *The Alberta Securities Commission Proceedings*

[28] On November 8, 2005, the Alberta Securities Commission (the "ASC") issued a temporary cease trade order against Mezinski and others on the basis that ASC Staff had established a *prima facie* case that Mezinski had breached Alberta securities law.

[29] By decision dated June 7, 2007, the ASC found that Mezinski had not been given proper notice of the hearing before the ASC nor had he been given notice of the ASC Staff's allegations against him. Therefore, the ASC declined to consider the allegations against Mezinski.

III. THE ISSUES

[30] This matter raises the following issues:

- (a) Did Mezinski trade in securities of Maitland without being registered to trade in securities, contrary to section 25 of the Act and contrary to the public interest?
- (b) Did Mezinski engage in a distribution of securities of Maitland when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53 of the Act and contrary to the public interest? and
- (c) Did Mezinski, with the intention of effecting a trade in securities of Maitland, make misleading representations to investors, including representations regarding the future listing and future value of Maitland shares contrary to section 38 of the Act and contrary to the public interest?

IV. EVIDENCE

A. *The Allegations against Mezinski*

[31] Staff submitted an affidavit from a Maitland investor, "H.F.", sworn February 13, 2012 (hereafter "Maitland Investor #1"). In the Affidavit, Maitland Investor #1 states that he resides in Bomanville, Ontario. He states that his net annual income is approximately \$24,000 and he has an RRSP valued at \$6,000. Maitland Investor #1 identifies himself as having a low level of investment experience. He states that he has never earned more than \$200,000 per year, his combined income with his spouse has never exceeded \$300,000 per year and his net assets have never exceeded \$1,000,000.

[32] Maitland Investor #1 states that he purchased 400 shares of Maitland at \$2.50 per share in or about September 2005 from a representative of Maitland who is not a respondent to this

proceeding. According to Maitland Investor #1, he subsequently received a phone call from Mezinski in October 2005 advising him to increase his shareholdings in Maitland before Maitland shares are listed on the stock exchange. Maitland Investor #1 agreed to purchase an additional 600 shares at a cost of \$1,500.

[33] Attached as exhibits to Maitland Investor #1's affidavit were copies of the following six documents:

- i. A document titled "Purchase Agreement" dated September 14, 2005, with respect to the purchase of 400 shares of Maitland by Maitland Investor #1 for a total purchase price of \$1,000. The "Purchase Agreement" is signed by Investor #1 but is not signed by anyone on behalf of Maitland;
- ii. A document titled "Subscription Agreement" dated October 26, 2005, providing for the purchase of 600 shares of Maitland by Maitland Investor #1 for a total purchase price of \$1,500. The "Subscription Agreement" is signed by Investor #1 but is not signed by anyone on behalf of Maitland;
- iii. A document titled "Purchase Agreement" dated October 26, 2005, with respect to the purchase of 600 shares of Maitland by Maitland Investor #1 for a total purchase price of \$1,500. The "Purchase Agreement" is signed by Investor #1 but is not signed by anyone on behalf of Maitland;
- iv. A printed copy of an e-mail sent October 26, 2005, from info@maitlandcapital.com to Maitland Investor #1 confirming his purchase of an additional 600 shares of Maitland and containing a signature line which reads "Tom Mezinski VP (Investor Relations)";
- v. Two copies of Maitland share certificates dated September 26, 2005, and November 9, 2005, certifying that Maitland Investor #1 is the holder of 400 and 600 shares of Maitland, respectively;

[34] The "Purchase Agreements" attached to Maitland Investor #1's affidavit contain the following statement:

THE SECURITIES HEREBY OFFERED ARE BEING PRIVATELY OFFERED TO ACCREDITED INVESTORS, AS DEFINED AT PARAGRAPHS 1(g) IN ATTACHED SCHEDULE "B", PURSUANT TO EXEMPTIONS FROM PROSPECTUS AND REGISTRATION REQUIREMENTS UNDER RULE 45-501 (REVISED) IMPLEMENTED BY THE ONTARIO SECURITIES COMMISSION AND UNDER REVISED MULTILATERAL INSTRUMENTS 45-103 IMPLEMENTED BY THE SECURITIES REGULATORY AUTHORITIES IN ALBERTA, BRITISH COLUMBIA, MANITOBA, NEWFOUNDLAND AND LABRADOR, NORTHWEST TERRITORIES, NOVA SCOTIA, NUNAVUT, PRINCE EDWARD ISLAND AND SASKATCHEWAN.

[35] Maitland Investor #1 states in his affidavit that at no time did Mezinski mention any risks associated with investing in Maitland, nor did Mezinski ask any questions about his personal financial situation including his income or financial assets.

[36] Staff submitted an affidavit from Bryan Gourlie, an Investigator with the ASC, sworn November 7, 2005. In his affidavit, Mr. Gourlie states that he conducted an investigation on behalf of the ASC into whether Maitland, Mezinski and others had contravened Alberta securities laws.

[37] In his affidavit, Mr. Gourlie states that he was advised by “D.R.” of Edmonton, Alberta, (hereafter “Maitland Investor #2”) that she had purchased shares of Maitland from Tom Mezinski. Mr. Gourlie states that Maitland Investor #2 provided him with a letter from Dianna Cassidy (one of the other respondents in this proceeding) on behalf of Tom Mezinski. The following documents were attached as an exhibit to Mr. Gourlie’s affidavit:

- i. a copy of a fax transmittal sheet dated October 18, 2005, to Maitland Investor #2, “From: Dianna Cassidy per Tom Mezinski”. In the memo portion of the transmittal sheet, there is a brief note to the investor followed by hand-printed initials “TM” and a signature line which reads “Tom Mezinski, Investor Relations, Maitland Capital Ltd.”; and
- ii. a copy of a document titled “Subscription Agreement” (unsigned) dated October 18, 2005, providing for the purchase of 1000 shares of Maitland by Maitland Investor #2 for a total purchase price of \$2,500.

[38] Mr. Gourlie states in his affidavit that he was advised by Maitland Investor #2 that she does not qualify as an “accredited investor”.

[39] Staff submitted an affidavit from Sabine Dobell, sworn February 2, 2006. The affidavit states that Ms. Dobell is an Assistant Investigator with the Commission. In her affidavit, Ms. Dobell states that she wrote to Grossman on November 5, 2005, requesting, among other things, a list of the current and former employees of Maitland. Attached to her affidavit are the following documents:

- i. A letter from Grossman to Ms. Dobell dated November 21, 2005, attaching a list of two current employees and 51 past employees of Maitland. Included on the list of past employees is the entry “29. Tom Mezinski Dept: Marketing”;
- ii. A letter from Ms. Dobell to Grossman dated November 22, 2005, in which Ms. Dobell requests, among other things, an explanation of the compensation structure applicable to Maitland employees for the sale of Maitland shares; and
- iii. A letter from Grossman to Ms. Dobell dated November 29, 2005, attaching answers to the questions posed by Ms. Dobell in her letter of November 22, 2005, including the following statement with respect to

the compensation of Maitland employees: “Marketing reps selling [Maitland] shares receive a commission of 17%”.

[40] Staff called Jody Sikora, Senior Forensic Accountant with the Enforcement Branch of the Commission, as a witness. Mr. Sikora testified that he obtained, by summons issued to TD Canada Trust, banking records relating to an account held in the name of Maitland Corp. Mr. Sikora testified that the banking records revealed that approximately \$5.5 million worth of cheques from individuals believed to be Maitland investors had been deposited into Maitland’s TD Canada Trust account. Mr. Sikora testified that the banking records also contained records of payments made to Maitland’s officers and employees. He submitted a copy of a cheque number 1336 dated November 17, 2005, drawn on Maitland’s TD Canada Trust account payable to “Tom Mezinski” in the amount of \$595. The cheque was cashed on November 22, 2005.

[41] Finally, Staff submitted a Certificate issued in accordance with section 139 of the Act, signed by Donna Leitch, Assistant Manager of Registrant Regulation in the Capital Markets Branch of the Commission which states “There is no record of Tom Mezinski having been registered under the *Securities Act* (Ontario).”

V. ANALYSIS

A. *Did Mezinski trade in securities without being registered, contrary to section 25 of the Act?*

i. Submissions

[42] Staff submits that Mezinski traded in securities without being registered, contrary to section 25 of the Act.

ii. The Law

[43] Subsection 25(1)(a) of the Act prohibits trading in securities without being registered:

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;

...

and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[44] The definition of a “security” as defined in subsection 1(1) of the Act includes “any share”.

[45] Registration requirements play a key role in Ontario securities law and form one of the cornerstones of the regulatory framework of the Act. They impose requirements of proficiency, good character and ethical standards on those people and companies trading in and advising on securities. As the Commission stated in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 (“*Limelight*”) at para. 135:

Registration serves an important gate-keeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public. Through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.

[46] Further, as stated in *Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 at p. 588:

The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business. For the attainment of this object, trading in securities is defined in s. 14 [now s. 1.1]; registration is provided for in s. 16 [now s. 25] as a requisite to trade in securities...

iii. Analysis

[47] I find that Mezinski was employed by Maitland as a salesperson for the sale of Maitland shares and traded in securities with Maitland Investor #1 and Maitland Investor #2. I further find that Mezinski has never been registered in any capacity with the Commission.

[48] Having determined that Mezinski traded in shares of Maitland without being registered with the Commission, I must consider whether any exemptions from the registration requirements applied to Mezinski. The onus for proving the existence of a valid exemption from the requirements of the Act is borne by the individual seeking to rely on the exemption. Although Mezinski was not present at the hearing, and made no attempt to assert the applicability of any exemptions, I am required to determine, on the basis of the evidence before me, whether any exemptions should apply.

[49] The Purchase Agreements tendered by Staff state that Maitland sought to rely on the accredited investor exemption from the registration and prospectus requirements in the Act pursuant to National Instrument 45-501 (now National Instrument 45-106).

[50] During the Material Time, National Instrument 45-501 – Prospectus and Registration Exemptions (“**NI 45-501**”) provided an exemption from the prospectus and registration requirements if the purchaser purchased the security as principal and was an “accredited investor”.

[51] An “accredited investor” was defined in section 1.1 of NI 45-501 and includes the following:

[...]

- (m) an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1,000,000;
- (n) an individual whose net income before taxes exceeded \$200,000 in each of the 2 most recent years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the 2 most recent years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year;

[...]

[52] I find that neither Maitland Investor #1, nor Maitland Investor #2 qualified as an “accredited investor” within the meaning of NI 45-501 (as it read during the material time). Indeed, there is no evidence before me to suggest that Mezinski made any attempt to determine whether either of these investors had sufficient assets or income to qualify as an accredited investor before he sold them Maitland shares. Therefore, I find that the accredited investor exemption to the registration requirements did not apply to Mezinski with respect to the sale of shares to Maitland Investor #1 or Maitland Investor #2.

[53] There is no evidence of any other exemptions capable of relieving Mezinski of the requirement to register with the Commission. Therefore I find that Mezinski traded in securities without registration contrary to s. 25 of the Act.

B. *Did Mezinski engage in distributions of securities of Maitland when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53 of the Act?*

i. Submissions

[54] Staff submits that Mezinski engaged in distributions of securities of Maitland when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53 of the Act.

ii. The Law

[55] “Distribution,” is defined in subsection 1(1) of the Act and includes a trade in securities of an issuer that have not been previously issued.

[56] Subsection 53(1) of the Act states that no person or company shall trade in a security “if the trade would be a distribution of the security”, unless a prospectus has been filed with and receipted by the Commission. The requirement to comply with section 53 of the Act is important because a prospectus ensures that prospective investors have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed investment decision. The prospectus requirements of the Act play a significant role in the overall scheme of investor protection. As stated by the court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.) (at p. 5590), “there can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares.”

iii. Analysis

[57] I find that previously unissued Maitland shares were sold to investors and that such trades were distributions within the meaning of the Act.

[58] Staff did not file any direct evidence to support their allegation that no prospectus had been issued with respect to the shares sold to Maitland Investors #1 and #2. It would have been helpful if Staff had filed a Certificate issued under section 139 of the Act in respect of Maitland in confirmation of Staff's allegation. In the absence of such evidence, I was asked to infer from the Purchase Agreement, and in particular the assertion that Maitland shares were exempt from the prospectus requirements under the Act (reproduced at paragraph 34 above) that a prospectus had not been filed with respect to Maitland Shares and receipts had not been issued for them by the Director. That is a possible inference, I would agree.

[59] Staff also filed the Affidavit of Sabine Dobell, referred to in para. 39 above, in which Ms. Dobell states that Grossman filed a Form 45-103F4 Report of Exempt Distribution. That report is generally filed only where an issuer has conducted a distribution without a prospectus.

[60] Finally, Staff filed a copy of the decision of Justice Sparrow in the section 122 proceedings against Maitland, Grossman and Ulfan. In that proceeding, Maitland, Grossman and Ulfan had been charged with the offence of trading in securities of Maitland without a prospectus contrary to subsection 53(1) of the Act. At paragraph 94 of her judgement, Justice Sparrow concludes that the prosecution had proven that Grossman and Ulfan had committed the offence:

Grossman and Ulfan both clearly traded in Maitland securities without being registered and without a prospectus having been issued.

[61] On the strength of the evidence before me, and the findings of Justice Sparrow in the section 122 proceedings, I find it reasonable to conclude, on a balance of probabilities, that Mezinski engaged in the distribution of security where a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to s. 53 of the Act. Having found that Mezinski did not abide by the prospectus requirements in the Act, I am obliged to consider any claims for exemption from the prospectus requirements. For the reasons set out at paragraphs 48 to 53 above, I find that no exemptions from the prospectus requirement apply to the distribution of shares to Maitland Investors #1 and #2.

C. *Did Mezinski, with the intention of effecting a trade in securities of Maitland, make misleading representations to investors, including representations regarding the future listing and future value of Maitland shares contrary to section 38 of the Act?*

i. Submissions

[62] Staff submits that Mezinski made a prohibited representation to Maitland Investor #1 concerning the future listing of Maitland shares.

ii. The Law

[63] Subsection 38(3) of the Act prohibits representations with respect to the future listing of a security on any stock exchange. Subsection 38(3) of the Act states:

38. (3) 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 representation, 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.

[64] Subsection 38(3) does not require an undertaking with respect to the future listing. An oral representation about listing shares on a stock exchange is sufficient to constitute a violation of subsection 38(3) of the Act, provided that such representation was made during the process of selling or trading a share. For example, in *Limelight*, the Commission found that evidence of salespersons stating that Limelight shares would be listed on an exchange, with the timeframe given ranging from 10 to 12 days to a year, constituted a breach of subsection 38(3) of the Act (*Limelight, supra*, at para. 181).

iii. Analysis

[65] I am satisfied that Mezinski told Maitland Investor #1 that Maitland shares would soon be listed on a stock exchange, and that the purpose of that representation was to induce Maitland Investor #1 to purchase the securities. Therefore, I find that Mezinski made a prohibited representation to Maitland Investor #1 concerning the future listing of Maitland shares, contrary to subsection 38(3) of the Act.

VI. CONCLUSION

[66] For the reasons set out above, I find that Mezinski contravened Ontario securities law through the following breaches of the Act:

- (a) Mezinski traded in securities of Maitland without being registered to trade in securities, contrary to subsection 25(1) of the Act;
- (b) Mezinski engaged in the distribution of securities of Maitland when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act; and

- (c) Mezinski, with the intention of effecting a trade in securities of Maitland, made misleading representations to investors regarding the future listing of Maitland shares contrary to subsection 38(3) of the Act.

[67] As outlined above in these Reasons, Staff requested that the Commission address both the merits of the allegations against Mezinski and the appropriate sanctions in the same decision, without the need for a separate sanctions hearing. The Ontario Securities Commission Rules of Procedure (2010), 33 O.S.C.B 8017 (the “**Rules**”) formally establish a two-part hearing process. Under the Rules, a respondent, having been found to have acted contrary to the Act, has an opportunity to attend a hearing before the Commission to make submissions on whether it would be appropriate for the Commission to impose sanctions as a result of those contraventions. Rules 17.3 reads:

17.3 Sanctions Hearing – (1) Unless the parties to a proceeding agree to the contrary, a separate hearing shall be held to determine the matter of sanctions and costs.

[68] Mezinski did not agree to dispense with the requirement that a separate hearing be held to determine the matter of sanctions and costs. Indeed, Mezinski has a reasonable expectation that the Commission will follow its own Rules. While the Commission may deviate from its Rules, it should only do so for compelling reasons. In my opinion, there is no compelling reason to deviate from the requirement to hold a separate hearing on the issue of sanctions and costs. As a result, there will be a separate hearing to determine the issue of sanctions and costs.

[69] For the reasons outlined above, I will issue an interim order in the form attached as Schedule “A” to these reasons setting a date for the sanctions and costs hearing and extending the Temporary Order, as it pertains to Mezinski, until the conclusion of the sanctions and costs hearing.

Dated at Toronto, this 6th day of July, 2012.

“Edward P. Kerwin”

Edward P. Kerwin

Schedule "A"



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor CP 55, 19^e étage
20 Queen Street West 20, rue queen ouest
Toronto ON M5H 3S8 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

**MAITLAND CAPITAL LTD., ALLEN GROSSMAN,
HANOCH ULFAN, LEONARD WADDINGHAM,
RON GARNER, GORD VALDE, MARIANNE HYACINTHE,
DIANNA CASSIDY, RON CATONE, STEVEN LANYS, ROGER MCKENZIE,
TOM MEZINSKI, WILLIAM ROUSE and JASON SNOW**

ORDER

(Sections 127 and 127.1)

WHEREAS on January 24, 2006, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") accompanied by a Statement of Allegations filed by staff of the Commission ("Staff") with respect to Maitland Capital Ltd. ("Maitland") Allen Grossman, Hanouch Ulfan, Leonard Waddingham, Ron Garner, Gord Valde, Marianne Hyacinthe, Dianna Cassidy, Ron Catone, Steven Lanys, Roger Mckenzie, Tom Mezinski ("Mezinski"), William Rouse and Jason Snow (collectively the "Respondents");

AND WHEREAS on January 24, 2006, the Commission ordered pursuant to s. 127(5) of the Act that: (a) all trading by Maitland and its officers, directors, employees and/or agents in securities of Maitland shall cease forthwith for a period of 15 days from the date thereof; (b) the Respondents cease trading in all securities; and (c) any exemptions in Ontario securities law do not apply to the Respondents (the "Temporary Order");

AND WHEREAS on September 12, 2006, the Commission extended the Temporary Order until the conclusion of the "Hearing";

AND WHEREAS on September 2, 2011, the Commission ordered that the hearing on the merits with respect to the allegations against Mezinski would take place on February 15, 16 and 17, 2012;

AND WHEREAS a hearing on the merits in respect of Mezinski was held before the Commission on February 15, 2012;

AND WHEREAS following the hearing on the merits, the Commission issued its Reasons and Decision with respect to the merits on July 6, 2012;

IT IS ORDERED THAT:

1. A hearing to determine sanctions and costs will be held on August 21, 2012, at 10:00 a.m. at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto;
2. A party who is unable to attend a hearing on August 21, 2012, must advise the Office of the Secretary within 10 days of the date of this Order;
3. Should any party not contact the Office of the Secretary within 10 days of the date of this Order and fail to attend at the time and place aforesaid, the hearing may proceed in the absence of the party, and such party is not entitled to any further notice of the proceeding; and
4. For the sake of clarity, the Temporary Order, as it pertains to Mezinski, is extended until the conclusion of the sanctions and costs hearing.

DATED at Toronto, Ontario this 6th day of July, 2012

Edward P. Kerwin