



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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

CP 55, 19<sup>e</sup> 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  
ABEL DA SILVA**

**REASONS FOR DECISION ON SANCTIONS AND COSTS  
(Sections 37, 127 and 127.1 of the *Act*)**

**Hearing:** June 5, 2012

**Decision:** September 24, 2012

**Panel:** James D. Carnwath - Commissioner and Chair of the Panel

**Appearances:** Cameron Watson - For Staff of the Commission

Abel Da Silva - Did not appear

## TABLE OF CONTENTS

<b>PART I – OVERVIEW .....</b>	<b>1</b>
<b>PART II – THE APPLICABLE LAW.....</b>	<b>1</b>
<b>A. APPROACH TO THE IMPOSITION OF SANCTIONS .....</b>	<b>1</b>
<b>B. THE SERIOUSNESS OF THE ALLEGATIONS.....</b>	<b>2</b>
<b>C. SPECIFIC SANCTIONING FACTORS APPLICABLE IN THIS MATTER .....</b>	<b>3</b>
<b>D. PERMANENT BANS.....</b>	<b>3</b>
<b>E. DISGORGEMENT .....</b>	<b>3</b>
<b>F. ADMINISTRATIVE PENALTY .....</b>	<b>4</b>
<b>G. COSTS.....</b>	<b>4</b>
<b>PART III – CONCLUSION.....</b>	<b>4</b>

## **PART I – OVERVIEW**

[1] This matter proceeded following a hearing on the merits in writing. A panel of the Ontario Securities Commission (the “**Commission**”) found on June 22, 2011 that the respondent, Abel Da Silva (“**Da Silva**”), engaged in conduct which was contrary to ss. 122(1)(a) and 122(1)(c) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “*Act*”) and contrary to the public interest. More specifically:

(a) On January 9, 2006, Da Silva made statements to the Commission with respect to his employment history and his financial situation, that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to section 122(1)(a) of the Act and contrary to the public interest; and

(b) Between and including April 23, 2007 and August 21, 2007, Da Silva breached the Sanctions Decision and the May 10, 2006 Cease Trade Order of the Commission by trading securities of Colby Cooper Inc., contrary to section 122(1)(c) of the Act and contrary to the public interest.

(*Re Abel Da Silva* (2011), 34 O.S.C.B. 7291 (the “**Merits Decision**”))

[2] On May 10, 2006, a cease trading order was made against Da Silva for a period of seven years, subject to certain exceptions. He was also ordered to pay \$7,500 costs of the Commission (*Re Allen* (2006), 29 O.S.C.B. 3944).

[3] On June 4, 2010, Da Silva entered a guilty plea in the Ontario Court of Justice to a charge of contravening Ontario securities laws by trading in securities of Colby Cooper Inc. at a time when he was prohibited from trading in securities by order of the Commission dated May 10, 2006 (The Affidavit of Wayne Vanderlaan sworn November 10, 2010 at paras. 34 to 38 and Exhibit "Q").

[4] On September 1st, 2010, Da Silva was sentenced to 75 days imprisonment to be served intermittently commencing on September 10, 2010. Da Silva was also placed on probation for two years following the conclusion of his intermittent sentence (Affidavit of Wayne Vanderlaan sworn November 10, 2010 at para. 39 and Exhibit "S").

## **PART II – THE APPLICABLE LAW**

### **A. Approach to the Imposition of Sanctions**

[5] The Commission must ensure that the sanctions imposed in each case are proportionate to the circumstances and conduct of the particular respondent. The factors the Commission should consider include:

- (a) the seriousness of the allegations;
- (b) the respondent's experience in the marketplace;
- (c) the level of a respondent's activity in the marketplace;
- (d) whether or not there has been a recognition of the seriousness of the improprieties;
- (e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;
- (f) any mitigating factors;
- (g) whether the violations are isolated or recurrent;
- (h) the size of any profit made or loss avoided from the illegal conduct;
- (i) the size of any financial sanctions or voluntary payment when considering other factors;
- (j) the effect any sanction might have on the livelihood of a respondent;
- (k) the restraint any sanctions may have on the ability of a respondent to participate without check in the capital markets;
- (l) the reputation and prestige of the respondent;
- (m) the shame or financial pain that any sanction would reasonably cause to the respondent; and
- (n) the remorse of the respondent.

*(Re Belteco Holdings Inc.*(1998), 21 O.S.C.B. 7743 at paras. 23-26;  
*Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at paras. 10, 16-19 and 26)

[6] The Commission may also consider general and specific deterrence in crafting appropriate sanctions. The weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at paras. 60 and 64; *Re Momentas Corp.* (2007), 30 O.S.C.B. 6475 at paras. 51-52).

## **B. The Seriousness of the Allegations**

[7] Evasion, obfuscation, and untruth in responding to Staff inquiries serves to hinder Staff's performance of their responsibilities to monitor and enforce compliance with Ontario securities

law; such conduct is an obstacle to effective regulation of the capital markets (*Re Hennig*, 2008 ABASC 363 at para. 1296).

[8] The efficacy and integrity of Commission orders should not be eroded by respondents who disregard and disrespect their terms. Achieving the purpose and objectives of the *Act* depends on the ability of the Commission to make such orders and have the persons or companies whom are the subject of those orders abide by the terms.

[9] Breaches of Commission orders show a disregard for the rule of law as well as for the Commission and its processes, undermine public confidence in the capital markets, and amount to conduct contrary to the public interest (*Re Prydz* (2000), 23 O.S.C.B. 3399 at page 4 (Q.L.)).

### **C. Specific Sanctioning Factors Applicable in this Matter**

[10] Da Silva received \$45,280 for his sale of Colby Cooper Inc. securities (Affidavit of Wayne Vanderlaan sworn November 10, 2010 at para. 38 and Exhibit “R”).

[11] Da Silva is a recidivist and an order restricting his activities in capital markets will send a message to other like-minded individuals that involvement in his type of conduct will result in sanctions by the Commission.

[12] In addition to Da Silva’s record for violating Ontario securities laws, Staff submit that Da Silva’s convictions for crimes of dishonesty are highly relevant, particularly with respect to the issue of specific deterrence. Da Silva’s criminal record dates back to 1964 demonstrating a substantial need for specific deterrence. Da Silva’s criminal record includes crimes of dishonesty spanning the period between 1985 and 2011 and two lengthy jail sentences for breaches of the *Act*. On November 15, 2011, Mr. Justice J.F. Kenkel in the Ontario Court of Justice sentenced Da Silva to twenty-seven months for eight violations of the *Act* in relation to *Shallow Oil and Gas Inc.* On March 30, 2012, Madame Justice S. Ray in the Ontario Court of Justice sentenced Da Silva to eighteen months concurrent for five violations of the *Act* in relation to *Moncasa Capital Corporation* (Criminal Record of Abel Marquis Da Silva at May 23, 2012; *Ontario Securities Commission v. Abel Da Silva* (15 November 2011), Newmarket 08 90000460 (Ont. Ct. J.); *R. v. Da Silva*, [2012] O.J. No. 2073).

### **D. Permanent Bans**

[13] I agree with Staff’s submission that Da Silva should be subject to permanent trading, acquisition, exemption, director and officer bans. His conduct demonstrates that he cannot be trusted to participate in the capital markets in even a limited capacity.

### **E. Disgorgement**

[14] This is an appropriate matter for a disgorgement order in the amount of \$45,280, the amount received by Da Silva from the sale of Colby Cooper Inc. securities.

## **F. Administrative Penalty**

[15] I agree with Staff's submission that Da Silva should pay an administrative penalty of \$250,000, given the seriousness of his misconduct and his repeated breaches of the *Act*.

## **G. Costs**

[16] I agree with Staff's submission that Da Silva should pay the total costs of Staff's investigation and conduct of the Hearing on the Merits in the amount of \$52,470.25.

## **PART III – CONCLUSION**

[17] It is ordered that:

- (a) pursuant to s. 127(1)2 of the *Act*, all trading by Da Silva cease permanently;
- (b) pursuant to s. 127(1)2.1 of the *Act*, the acquisition of any securities by Da Silva is prohibited permanently;
- (c) pursuant to s. 127(1)3 of the *Act*, any exemptions contained in Ontario securities law do not apply to Da Silva permanently;
- (d) I hereby reprimand Mr. Da Silva for his conduct, pursuant to s. 127(1)6 of the *Act*;
- (e) pursuant to s. 127(1)8 of the *Act*, Da Silva is prohibited from becoming or acting as a director or officer of any issuer permanently;
- (f) pursuant to s. 127(1)8.2 of the *Act*, Da Silva is prohibited from becoming or acting as a director or officer of a registrant permanently;
- (g) pursuant to s. 127(1)8.4 of the *Act*, Da Silva is prohibited from becoming or acting as a director or officer of an investment fund manager permanently;
- (h) pursuant to s. 127(1)8.5 of the *Act*, Da Silva is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently;
- (i) pursuant to s. 127(1)9 of the *Act*, Da Silva pay an administrative penalty of CDN \$250,000, to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;
- (j) pursuant to s. 127(1)10 of the *Act*, Da Silva shall disgorge to the Commission the entirety of the \$45,280 he obtained as a result of his non-compliance with Ontario securities law, to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*;

- (k) pursuant to s. 127.1 of the *Act*, Da Silva shall pay \$52,470.25, representing the costs and disbursements incurred by the Commission in the investigation and hearing of this matter; and
- (l) pursuant to s. 37(1) of the *Act*, Da Silva is prohibited from telephoning any residence within or outside of Ontario for the purpose of trading in any security or derivative or in any class of securities or derivatives.

Dated this 24th day of September, 2012.

“James D. Carnwath  
James D. Carnwath, Q.C.