



Ontario
Securities
Commission

Commission des
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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 VINCENT CICCONE and CABO CATOCHE CORP. (a.k.a.
MEDRA CORP. and MEDRA CORPORATION)**

**REASONS AND DECISION with respect to CABO CATOCHE CORP. (a.k.a.
MEDRA CORP. and MEDRA CORPORATION)
(Section 127 of the Act)**

Hearing: September 5, 7, 13 and 20, 2012
October 9 and 19, 2012
November 8 and 29, 2012
December 19, 2012
April 2, 2013

Decision: June 18, 2013

Panel: Vern Krishna, C.M., Q.C. - Commissioner and Chair of the Panel

Appearances: Michelle Vaillancourt - For Staff of the Commission

No one appeared on behalf of Cabo Catoche Corp. (a.k.a. Medra Corp.
and Medra Corporation)

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REASONS AND DECISION with respect to CABO CATOCHE CORP. (a.k.a. MEDRA CORP. and MEDRA CORPORATION)

I. OVERVIEW

A. Introduction

[1] This was a hearing before the Ontario Securities Commission (the “**Commission**”) pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) to consider whether Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation) (“**Medra**”) contravened Ontario securities law and acted contrary to the public interest.

[2] Staff of the Commission (“**Staff**”) alleges that, from April 2008 to December 2009 (the “**Material Time**”), Medra engaged in unregistered trading and illegal distribution of its securities, contrary to sections 25 and 53 of the Act. Staff further alleges that Medra engaged in fraud, contrary to section 126.1(b) of the Act, and that Medra engaged in a course of conduct related to its securities with a view of creating a misleading appearance of trading activity or an artificial price for its securities, contrary to the public interest.

[3] The other respondent in this matter, Vincent Ciccone (“**Ciccone**”), settled with Staff and the settlement agreement between Staff and Ciccone was approved by the Commission on September 7, 2012 (*Re Ciccone* (2012), 35 O.S.C.B. 8417).

B. History of Proceedings

1. The Temporary Order

[4] On April 21, 2010, the Commission issued a temporary cease trade order against Medra, Ciccone and a number of other individuals and companies (the “**Temporary Order**”). The Temporary Order was extended from time to time and, pursuant to an order of the Commission dated May 3, 2012, the Temporary Order was extended against Medra and Ciccone until the conclusion of the hearing on the merits in this matter.

2. Merits Hearing

[5] This proceeding was commenced by a Notice of Hearing issued by the Commission on October 3, 2011 in connection with a Statement of Allegations filed by Staff on September 30, 2011. An Amended Notice of Hearing and an Amended Statement of Allegations were issued on May 3, 2012 and May 2, 2012, respectively.

[6] The hearing on the merits in this matter commenced on September 5, 2012. On that day, Staff informed the Commission that Staff and Ciccone were seeking an adjournment in light of their settlement discussions. The hearing was adjourned to September 7, 2012 and, as referenced in paragraph [3] above, another panel of the Commission approved the settlement agreement between Staff and Ciccone on September 7, 2012.

[7] The hearing was adjourned subsequently from time to time to address disclosure issues and Staff’s request to convert the hearing to a written hearing, as discussed further

below. On November 29, 2012, I heard oral evidence from Ciccone. By order dated December 3, 2012, I ordered that the hearing be converted to a written hearing.

3. Disclosure

[8] When the hearing convened on September 7, 2012, I expressed concerns regarding whether Staff had satisfied its disclosure obligation to Medra, the offices of which are located in Mexico. I received submissions from Staff on September 7 and 13, 2012 on this issue and, on September 20, 2012, I gave an oral ruling and issued an order that Staff had not met its disclosure obligation to Medra (written reasons for my decision were issued on October 31, 2012 (*Re Ciccone* (2012), 35 O.S.C.B. 10061)). Accordingly, I ordered Staff to provide copies of disclosure material to Medra subject to certain conditions and the hearing was further adjourned for Staff to meet its disclosure obligation to Medra. On October 9, 2012, I was informed by Staff that Medra did not respond to Staff's communications. As Medra did not provide Staff with an undertaking relating to the use of the disclosure material, which was a condition that must be met by Medra prior to Staff's provision of disclosure material, I was satisfied that Staff met its disclosure obligation to Medra and proceeded with the hearing on the merits.

4. Oral and Written Hearing on the Merits

[9] On October 9, 2012, Staff requested that the hearing on the merits be converted to a written hearing pursuant to Rule 11 of the *Commission Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "**Rules of Procedure**"). Staff informed the Panel that it intended to introduce affidavit evidence of four individuals, namely, Ciccone and three Staff members, and proposed a schedule for the filing of materials in support of its request. On October 19, 2012, following an appearance in this matter, I issued an order setting out a schedule for the filing of materials with respect to Staff's request:

- 1) Staff shall serve and file written submissions in support of their request to convert the Merits Hearing to a written hearing no later than October 23, 2012, such submissions to include copies of any affidavits Staff intend to rely on in the proposed written hearing;
- 2) If Medra objects to converting the Merits Hearing to a written hearing, it shall file with the Office of the Secretary, and serve upon Staff, written submissions setting out the reasons for their objection no later than November 7, 2012;
- 3) The Merits Hearing shall be reconvened on November 8, 2012, at 3:00 p.m. at the offices of the Commission...for the purpose of the Panel giving its ruling on the request to convert to a written hearing and, if the request is granted, to set a schedule for the receipt of submissions in the written hearing.

[10] Staff served, on October 19 and 22, 2012, and filed, on October 23, 2012, written submissions in support of this request. Included in the submissions were the affidavits of the three Staff members on which Staff intended to rely in the proposed written hearing.

In its written submissions, Staff indicated that it had not heard from Ciccone with respect to Staff's request that he give affidavit evidence. Staff proposed, in the event that Ciccone did not respond to Staff's request or refused to provide an affidavit, to examine Ciccone orally at the hearing and to continue the hearing in writing thereafter.

[11] On November 8, 2012, Staff informed the Panel that while Medra advised Staff that it would consider the materials sent by Staff, Medra did not indicate that it objected to converting the hearing to a written hearing. Staff further informed the Panel that it was unable to get in contact with Ciccone and was therefore unable to obtain an affidavit from him. Accordingly, Staff requested that a date be set for the continuation of the hearing on the merits for the purpose of hearing oral evidence from Ciccone. I adjourned the hearing to November 29, 2012 for the purpose of hearing oral evidence from Ciccone.

[12] On November 29, 2012, I heard oral evidence from Ciccone. By order dated December 3, 2012, I ordered, pursuant to Rule 11 of the Rules of Procedure, that the hearing on the merits be converted to a written hearing for the purposes of taking evidence-in-chief by means of affidavit evidence from the three Staff members. I made an order setting out the following schedule:

...

2. If Staff wishes to amend any of the affidavits previously served and filed, Staff must serve and file such amendments no later than December 10, 2012;
3. Staff is directed to serve and file, no later than December 10, 2012, written submissions setting out Staff's position with respect to the findings of fact the Panel is asked to make in respect of the evidence from Staff's Affiants;
4. the Merits Hearing will be reconvened on December 19, 2012...for the purpose of cross-examination of Staff's Affiants and/or to allow Staff's Affiants to answer any questions from the Panel;
5. a schedule for the filing of evidence by Medra and the filing of final written submissions by both parties will be established when the hearing reconvenes on December 19, 2012;

...

[13] Staff served, on December 10, 2012, and filed, on December 11, 2012, amendments to one of the affidavits previously served and filed, as well as written submissions setting out Staff's position with respect to the affidavit evidence. On December 19, 2012, a hearing was held in which Staff made submissions on the affidavits of the three Staff members and the scheduling of the filing of evidence by Medra and the filing of final written submissions by both parties. I made a further order setting out the following schedule:

1. Medra shall serve and file, no later than January 18, 2013, any evidence Medra seeks to file in this matter;
2. Staff shall serve and file, no later than January 25, 2013, any evidence Staff seeks to file in reply;
3. Staff shall serve and file, no later than February 15, 2013, Staff's written closing submissions;
4. Medra shall serve and file, no later than February 22, 2013, Medra's written closing submissions;
5. Staff shall serve and file, no later than February 28, 2013, Staff's reply submissions, if any;
6. the Merits Hearing will be reconvened on April 2, 2013 for the purpose of hearing oral closing submissions of Staff and Medra;

...

[14] Staff appeared on April 2, 2013 and made oral closing submissions, supported by written closing submissions which were served on February 15 and 19, 2013 and filed on February 20, 2013. Medra did not file any evidence or written submissions by the deadlines set out above, nor did it appear on April 2, 2013 to make oral closing submissions. During closing submissions, I ordered Staff to provide supplementary submissions with respect to the allegation that Medra engaged in a course of conduct related to its securities with a view of creating a misleading appearance of trading activity or an artificial price for those securities, contrary to the public interest, by the close of business on April 15, 2013. Staff served and filed such supplementary submissions on April 15, 2013. An order was issued on April 17, 2013 providing that Medra shall serve and file any submissions in response to Staff's supplementary submissions by the close of business on April 29, 2013. Medra did not file any submissions by that date.

C. The Respondents

1. Medra

[15] Medra was incorporated in the State of Delaware on June 29, 2000 under the name DCH Technology, Inc. The name of the corporation was changed from DCH Technology, Inc. to Medra Corp. on July 27, 2006 and from Medra Corp. to Cabo Catoche Corp. on January 13, 2010.

[16] There is no record that Medra had been registered under the Act. Nor is there any record that Medra had been a reporting issuer in Ontario or had filed a prospectus with the Commission during the Material Time.

2. Ciccone

[17] Ciccone is a resident of Cambridge, Ontario. He was registered as a salesperson of a limited market dealer from November 1, 2004 to August 29, 2005. He was not registered under the Act during the Material Time.

[18] Ciccone was the President and Chief Executive Officer of Medra during the Material Time.

[19] Ciccone was also the sole director and officer of Ciccone Group Inc. (“**Ciccone Group**”), a corporation incorporated in Ontario on August 18, 1992 under the name 990509 Ontario Inc. (“**990509**”). The name of the corporation was changed on March 8, 2010 to Ciccone Group. Ciccone Group filed an assignment in bankruptcy on November 30, 2010.

[20] There is no record that Ciccone Group was ever registered under the Act.

[21] Ciccone settled with Staff and his settlement agreement with Staff was approved by the Commission on September 7, 2012.

II. NON-ATTENDANCE OF MEDRA

[22] Medra did not appear on any days of the hearing on the merits. It did not file any materials, nor did it make any submissions, on the merits in this matter. Based on the affidavits of service filed in this matter, I was satisfied that Medra was given notice of the hearing in accordance with subsection 6(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the “**SPPA**”). Accordingly, I was entitled to proceed in the absence of the company or its representative in accordance with subsection 7(1) of the SPPA.

III. THE ISSUES

[23] Staff’s allegations raise the following issues:

- (a) Did Medra trade securities or engage in the business of trading securities without being registered, contrary to subsection 25(1)(a) of the Act, as that subsection existed prior to September 28, 2009, and subsection 25(1) of the Act, on and after September 28, 2009?
- (b) Did Medra engage in a distribution of securities without filing a prospectus, contrary to subsection 53(1) of the Act?
- (c) Were any exemptions from the registration or prospectus requirements available to Medra?
- (d) Did Medra engage or participate in acts, practices or a course of conduct relating to its securities that it knew or reasonably ought to have known

perpetrated a fraud on persons or companies, contrary to section 126.1(b) of the Act?

- (e) Did Medra engage in a course of conduct related to its securities with a view of creating a misleading appearance of trading activity or an artificial price for those securities, contrary to the public interest?

[24] In the Amended Statement of Allegations, Staff alleged that Medra raised approximately \$8 million from investors (i) from the issuance and sale of over 85 million shares to over 370 investors and (ii) from the sale of units of Medra's Founding Partners Program to at least 15 investors. In its written submissions, Staff withdrew the second allegation that Medra sold units of Medra's Founding Partners Program to at least 15 investors.

IV. THE EVIDENCE

[25] Staff called one witness, Ciccone, to give oral evidence and filed affidavit evidence of three Staff members, namely, Allister Field ("**Field**"), Michael Ho ("**Ho**") and Amy Tse ("**Tse**").

[26] Medra did not appear and did not submit any evidence.

A. Ciccone

[27] Ciccone gave oral evidence regarding his involvement in Medra. He testified that Medra's head office in Canada was located in Kitchener, Ontario. In his evidence, Ciccone described Medra as being in the business of "raising funds for investments in resort properties...[i]n Mexico, Cancun" (Hearing Transcript dated November 29, 2012 at p. 15). He testified that Medra had two projects in Cancun, Mexico, namely, the "Puerto Aventuras (Mexico) project" and the "Monarch Cancun (Mexico) project" (together, the "**Projects**").

[28] Ciccone testified that he was the Chief Executive Officer and President of Medra from March 2008 to December 2009, following which time period Jeffery Jensen ("**Jensen**")¹ assumed control of the company. He testified that, during the Material Time, he was responsible for raising funds in Canada and, John Gel ("**Gel**"), his business partner, was responsible for purchasing properties in Cancun, Mexico.

[29] Ciccone's evidence is that funds were raised by issuing Medra shares from treasury and that he was involved in such issuance. He explained that as its President and CEO, he issued, on behalf of Medra, treasury directions to Manhattan Transfer Registrar Co. ("**Manhattan Transfer**"), the transfer agent and registrar for Medra, for all sales of Medra shares from treasury to investors. Manhattan Transfer would in turn issue share certificates to investors who had purchased Medra treasury shares.

¹ Also known as Jeffery Jensen Anuth.

[30] Ciccone testified that Medra sold shares from treasury to investors at various prices, ranging from \$0.50 per share to \$3.28 per share. He testified that the price of the treasury shares was determined by the price of Medra shares that were being traded on the Pink Sheets LLC in the over-the-counter securities market in the U.S. (the “**Pink Sheets**”). While Medra was being traded on the Pink Sheets, Ciccone’s evidence is that he was not involved in arranging for Medra to be quoted.

[31] Ciccone provided evidence that Medra treasury shares were sold to investors by him and agents that he retained. According to Ciccone, Medra shares were sold during meetings with investors or prospective investors as well as during events in which a presentation outlining the investment was given to investors or prospective investors. During these meetings or events, investors were told that funds would be used to develop the Projects and were shown the underlying properties of the Projects. He testified that treasury shares of Medra were sold to more than 100 or 200 investors during the time he was CEO and President of Medra.

[32] Ciccone testified that he maintained a website for Ciccone Group which referred to opportunities to invest in Medra. Ciccone further testified that he also maintained a website for Medra. He acknowledged that one of the purposes of the Medra website, as the website indicated, was to direct investors to contact Medra in relation to the purchase of Medra shares. In both cases, he retained a company to assist with the technical side of the websites and provided that company with the content to be displayed.

[33] It is Ciccone’s evidence that he opened bank accounts in the name of Medra to receive and transfer investor funds and that he was authorized to do so pursuant to a resolution of Medra’s board of directors dated March 3, 2008. According to Ciccone, in April 2008, he opened two accounts for Medra at TD Financial Group (together, the “**Medra Accounts**”).

[34] Ciccone acknowledged in his evidence that he had sole signing authority for the Medra Accounts during the Material Time, and when he resigned as President and CEO of Medra in December 2009, Jensen became the signing officer for the Medra Accounts. Although the banking records obtained from TD Financial Group indicate that Ciccone was one of the two signatories for the Medra Accounts on December 16, 2009, Ciccone’s testimony was that he believed that he no longer had signing authority for those accounts when Jensen assumed control of the company at that time. According to Ciccone, his name continued to be listed in the banking documents on December 16, 2009 because, in order for a foreign company to maintain an account in Canada, there must be a Canadian signatory for the account. He further testified that he had not signed any cheques for the company since December 16, 2009.

[35] According to Ciccone, funds received from the sale of Medra shares from treasury were deposited into the Medra Accounts. In his testimony, he confirmed that Medra did not generate revenue from its business and indicated that he does not dispute that, subject to certain transfers, the majority of funds that were deposited into the Medra Accounts came from the sale of Medra shares from treasury. More specifically, he indicated that he does not dispute Staff’s analysis described in paragraph [45] below.

[36] Ciccone's evidence discloses that some investor funds were then transferred to accounts at TD Financial Group in the name of Ciccone Group (the "**Ciccone Group Accounts**"). While banking documents indicate that both Ciccone and his spouse had signing authority for the Ciccone Group Accounts, Ciccone testified that he was the only person to have signed cheques drawn on the Ciccone Group Accounts and that he believed himself to be the sole signing authority for those accounts.

[37] Funds in the Ciccone Group Accounts were dispersed for various uses. For example, Ciccone testified that \$800,000 of investor funds was transferred on April 24, 2008 from the Medra Accounts to the Ciccone Group Accounts to be invested with Axxess Automation LLC ("**Axxess Automation**"), a company founded by Gordon Driver that purported to generate return by using computer software to invest in futures contracts or options. Ciccone also gave evidence that he transferred funds that he considered to be funds raised from the sale of Medra treasury shares in the Ciccone Group Accounts to his personal accounts at TD Financial Group (the "**Ciccone Personal Accounts**"). According to Ciccone, he subsequently transferred those funds from the Ciccone Personal Accounts to his trading accounts at TD Waterhouse (the "**Ciccone Trading Accounts**") to purchase shares of Medra on the Pink Sheets.

[38] Ciccone testified that while investors were under the impression that investor funds would be used to purchase properties for the Projects, references to other investment opportunities had also been made to investors in the events referred to in paragraph [31] above. However, he acknowledged that it was not represented to investors that funds would be transferred to Ciccone Group or invested with Axxess Automation. He further testified that, with respect to the funds invested with Axxess Automation, the funds were only invested temporarily with that company in order to generate returns and both the principal amounts invested and the returns generated were intended to be used to purchase properties for the Projects.

[39] With respect to the trading of Medra shares on the Pink Sheets through the Ciccone Trading Accounts, Ciccone testified that Gel represented himself as an expert in the stock market and would be able to increase the value of Medra shares. Ciccone testified that Gel instructed him to buy a specific number of shares on the Pink Sheets at a price specified by Gel and the price of Medra shares rose from \$0.50 per share to a high point of \$3.28 per share.

[40] Ciccone testified that no prospectus had been filed with the Commission because he was told by Gel that it was not necessary to file one. He also testified that he did not know what an accredited investor was during the Material Time and did not take steps to ascertain whether investors were accredited.

B. Field

[41] Field, an investigator with the Enforcement Branch of the Commission, was assigned to this matter on January 28, 2010. He provided, as evidence on the merits, affidavits sworn October 19, 2012 and December 10, 2012 (the "**Field Affidavits**") identifying various documents obtained in Staff's investigation in this matter, including:

- Incorporation documents for Ciccone Group and Medra.
- Share certificates issued by Medra.
- A document entitled “Transfer Journal” prepared by Manhattan Transfer. The Transfer Journal provides information relating to the issuance of Medra treasury shares to investors, including the names of investors to whom Medra treasury shares were issued, the dates of the issuances, the share certificate numbers and the number of Medra shares issued.
- Section 139 certificates issued by the Commission as to the registration or non-registration of Medra, Ciccone and Ciccone Group and the filing or non-filing of a prospectus by Medra with the Commission.
- Printouts of the Pink Sheets website showing data relating to the trading of Medra securities in the secondary market.
- Banking records relating to the Medra Accounts, the Ciccone Group Accounts, the Ciccone Personal Accounts and the Ciccone Trading Accounts.
- Documents relating to Staff’s communication with Medra investors, including the transcript of a voluntary interview with an investor who will be referred to as “**L.M.**” in these reasons, and notes of telephone interviews with investors.

[42] Staff prepared a list of Medra’s shareholders who purchased Medra treasury shares (the “**Medra Shareholder List**”). The Medra Shareholder List was prepared based on the Transfer Journal and the banking information relating to the Medra Accounts.

[43] Field also reviewed the banking records and provided an analysis of the flow of funds between various accounts related to Medra and Ciccone, as follows:

- On April 24, 2008, the amount of \$800,000 was transferred from the Medra Accounts to the Ciccone Group Accounts and the amount of US\$800,000 was transferred from the Ciccone Group Accounts to an account in the name of Axxess Automation.
- From November 2008 to May 2009, amounts totalling \$595,000 and US\$650,000 were transferred from the Ciccone Group Accounts to the Ciccone Personal Accounts.
- From November 2008 to June 2009, amounts totalling \$521,000 and US\$757,000 were transferred from the Ciccone Personal Accounts to the Ciccone Trading Accounts.

C. Ho

[44] Ho is a forensic accountant with the Enforcement Branch of the Commission. As part of the investigation of this matter, Ho reviewed documents obtained by Field,

including the banking records, and provided in his affidavit sworn October 19, 2012 an analysis of the flow of funds between various accounts related to Medra and Ciccone.

[45] Ho prepared an analysis of the total amount of funds deposited into the Medra Accounts that came from the sale of Medra shares from treasury during the Material Time. In determining this total amount, Ho only took into account amounts over \$2,000 that were deposited into the Medra Accounts and eliminated a number of deposits, including deposits received from the Ciccone Group Accounts, transfers between the Medra Accounts, deposits relating to the purchase of units of Medra's Founding Partners Program,² deposits received from an account at TD which Ciccone was unable to identify at the hearing³ and deposits subsequently reversed by the bank such as NSF deposits.

[46] According to this analysis, the total amount of investor funds deposited into the Medra Accounts was approximately \$7,770,478, comprising of \$2,588,850 and US\$4,630,588.⁴

[47] Ho's evidence is that although he attempted to match deposit information relating to the \$7,770,478 to investors on the Medra Shareholder List, he was not able to match all of the \$7,770,478 to the investors. More specifically, he was only able to match \$2,538,850 and US\$2,144,087 to the names of investors on the Medra Shareholder List. Ho explained that this is because banking documents do not always provide the name of the depositor.

[48] Ho further conducted an analysis of the flow of funds between the Medra Accounts and the Ciccone Group Accounts. His analysis shows that, from April 1, 2008 to December 2009, amounts totaling \$1,463,612.18 and US\$1,024,000 were transferred from the Medra Accounts to the Ciccone Group Accounts. The analysis further shows that, in the same time period, amounts totaling \$550,000 and US\$881,378.59 were transferred from the Ciccone Group Accounts to the Medra Accounts. His analysis demonstrates that, on a net basis, \$913,612.18 and US\$142,621.41 were transferred from the Medra Accounts to the Ciccone Group Accounts.

D. Tse

[49] Tse is a forensic accountant with the Enforcement Branch of the Commission. In her affidavit sworn October 19, 2012, she identified a printout of Ciccone Group's website as it appeared on July 22, 2009 at ciccone-group.com and a printout of Medra's website as it appeared in or about September and/or October 2009. With respect to Medra's website, Tse gave evidence that it was registered to Ciccone.

² As set out in paragraph [24] above, allegations relating to the Founding Partners Program have been withdrawn by Staff. The deposits relating to the purchase of units of Medra's Founding Partners Program totalled US\$1,279,000.

³ The deposits received from this TD bank account totalled \$75,000.

⁴ The amount of US\$4,630,588 is converted into Canadian dollars using the monthly average exchange rate of 1.119 for the period from April 2008 to December 2009, as published on the Bank of Canada website.

[50] Tse further identified a printout of the Pink Sheets website as it appeared on September 15, 2009 which contained general information about Medra, including that Medra was quoted on the Pink Sheets and that the last trade date at that time was September 14, 2009.

V. STANDARD OF PROOF

[51] The standard of proof in this proceeding is the civil standard. In *F.H. v. McDougall*, [2008] 3 S.C.R. 41 (“*McDougall*”) at para. 40, the Supreme Court of Canada reaffirmed that “there is only one civil standard of proof at common law and that is proof on a balance of probabilities”. Accordingly, Staff must prove its allegations on a balance of probabilities. The Panel must scrutinize the evidence with care and be satisfied “whether it is more likely than not that the event occurred” (*McDougall, supra*, at para. 44).

VI. ANALYSIS

A. Did Medra trade securities or engage in the business of trading securities without being registered, contrary to subsection 25(1)(a) of the Act, as that subsection existed prior to September 28, 2009, and subsection 25(1) of the Act, on and after September 28, 2009?

1. The Law

[52] Prior to September 28, 2009, the registration requirement under the Act was set out in subsection 25(1)(a) of the Act. That subsection stated:

25. (1) Registration for trading – 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.

[53] Subsection 25(1) was amended on September 28, 2009. It now reads:

25. Registration – (1) Dealers – Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities unless the person or company,

(a) is registered in accordance with Ontario securities law as a dealer; or

(b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

[54] The requirement for registration is now determined by a “business trigger”. In determining whether a person or company is trading in securities for a business purpose, section 1.3 of Companion Policy 31-103CP – Registration Requirements, Exemptions and Ongoing Registrant Obligations sets out a number of relevant factors that are derived from case law and regulatory decisions that have interpreted the “business purpose test” for securities matters. The relevant factors are as follows:

- (a) Engaging in activities similar to a registrant;
- (b) Intermediating trades or acting as a market maker;
- (c) Directly or indirectly carrying on the activity with repetition, regularity or continuity;
- (d) Being, or expecting to be, remunerated or compensated; and
- (e) Directly or indirectly soliciting.

[55] “Trade” or “trading” is defined in the Act to include:

(a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith...

2. Analysis

[56] The evidence is clear that Medra engaged in trading or acts in furtherance of trading securities and engaged in the business of trading securities. Based on Ciccone’s testimony summarized in paragraphs [29] to [35] above, which is supported by the affidavit evidence submitted by Staff, I find that Medra:

- (a) maintained a website for the purpose of inviting investors or prospective investors to contact Medra in connection with the purchase of Medra shares;
- (b) solicited interest from investors or prospective investors in Medra shares through its representatives in meetings with individual investors and in events in which a presentation was given to investors to provide information regarding investing in Medra;
- (c) retained a transfer agent and provided treasury directions to the transfer agent to issue share certificates to investors; and

- (d) opened and maintained accounts which received funds from investors in connection with their investments.

[57] The Transfer Journal and the banking records, which include cheques issued by investors payable to Medra to purchase Medra shares, show that Medra sold shares to investors for valuable consideration. During the hearing, Ciccone testified that Medra shares were sold from treasury to more than 100 or 200 investors, and Staff indicated in its oral closing submissions that it does not dispute Ciccone's testimony that Medra sold shares to more than 200 investors. During his testimony, Ciccone identified two investors listed in the Transfer Journal who purchased shares from Medra during the Material Time:

- (a) On August 26, 2008, an investor with the initials B.V.D.L. issued a cheque in the amount of \$10,000 payable to Medra for the purchase of Medra shares. The Transfer Journal shows that 11,000 shares were issued to this investor on September 2, 2008.
- (b) On December 15, 2008, an investor with the initials W.C.S. issued a cheque in the amount of \$50,000 payable to Medra for the purchase of Medra shares. The Transfer Journal shows that 50,000 shares were issued to this investor on December 22, 2008.

[58] I accept Ho's analysis that Medra received a total of approximately \$7,770,478⁵ in consideration for shares sold to investors. Although Ho indicated in his affidavit that he was unable to match all of the \$7,770,478 to the investor names on the Medra Shareholder List, I accept Ho's explanation that it is because the supporting documents from the bank do not always provide the name of the depositor. Further, as set out in paragraph [35] above, Ciccone in his testimony indicated that he does not dispute Staff's methodology in determining the total amount raised, described in paragraph [45] above. Accordingly, I find that Medra sold shares to more than 100 or 200 investors and raised a total of approximately \$7,770,478.

[59] Staff introduced into evidence section 139 certificates that show that Medra was not registered to trade securities under the Act during the Material Time.

[60] I find that the evidence above demonstrates that Medra engaged in trading and acts in furtherance of trading securities and engaged in the business of trading securities without registration, contrary to subsection 25(1)(a) of the Act, as that subsection existed prior to September 28, 2009, and subsection 25(1), on and after September 28, 2009, and contrary to the public interest.

⁵ See paragraph [46] and footnote 4

B. Did Medra engage in a distribution of securities without filing a prospectus, contrary to subsection 53(1) of the Act?

1. The Law

[61] The prospectus requirement is set out in subsection 53(1) of the Act. It provides that:

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.

[62] A “distribution” is defined in the Act to mean:

(a) a trade in securities of an issuer that have not been previously issued,

...

2. Analysis

[63] As established above in paragraphs [56] to [58] above, Medra engaged in trading and acts in furtherance of trading its securities. Accordingly, Medra engaged in trades in securities of an issuer as contemplated by paragraph (a) of the definition of “distribution” under the Act.

[64] The definition of a “distribution” also stipulates that the securities in question must not have been previously issued. In this case, Ciccone testified that Medra sold shares from treasury which were not previously issued.

[65] For the reasons above, the trading of Medra treasury shares constituted a distribution within the meaning of the Act.

[66] The section 139 certificates in evidence show that Medra did not file a prospectus or a preliminary prospectus during the Material Time.

[67] Accordingly, I find that Medra engaged in a distribution without filing a prospectus, contrary to subsection 53(1) of the Act and contrary to the public interest.

C. Were any exemptions from the registration or prospectus requirements available to Medra?

[68] Under securities legislation or rules, there are a number of exemptions from the registration and prospectus requirements. Once Staff has shown that a respondent has traded securities without registration or engaged in a distribution without filing a prospectus, the onus shifts to the respondent to establish that one or more exemptions

from the registration or prospectus requirements were available (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 at para. 142).

[69] There is no evidence before me that one or more exemptions from the registration or prospectus requirements were available. In fact, there is evidence before me that not all of the investors were accredited investors. Staff has interviewed a number of Medra investors and provided affidavit evidence that five Medra investors did not meet the criteria to be an accredited investor. In his testimony, Ciccone also acknowledged that he took no steps to ascertain whether the investors were accredited because he did not understand what an accredited investor was and did not know that an exemption was required to sell securities without a prospectus.

[70] In these circumstances, I find that no exemption from the registration or prospectus requirements was available to Medra.

D. Did Medra engage in fraud, contrary to section 126.1(b) of the Act?

1. The Law

[71] Section 126.1(b) of the Act is the fraud provision. It states that:

126.1 Fraud and market manipulation – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,

...

(b) perpetrates a fraud on any person or company.

[72] The jurisprudence has established the elements of fraud under section 126.1(b) of the Act as follows:

The act of fraud is established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

The mental element of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk.)

(see *R. v. Théroux*, [1993] 2 S.C.R. 5 at para. 27)

[73] The fraud provision of the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418, as amended, has identical operative language as section 126.1 of the [Ontario] Act. The mental element of the fraud provision has been considered by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (leave to appeal to the Supreme Court of Canada denied) (“*Anderson*”):

...[the fraud provision of the BC Act] does not dispense with proof of fraud, including proof of a guilty mind...[the fraud provision of the BC Act] simply widens the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated by others, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions.

(*Anderson, supra*, at para. 26)

[74] For a corporation, it is sufficient to show that its directing minds knew or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of section 126.1(b) of the Act (see, for example, *Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 at para. 221).

2. Analysis

[75] Medra represented to investors that its business involved the development of resort properties in Cancun, Mexico. Medra’s website contained the following statements:

“Medra intends to become the premier vehicle through which individuals can participate in the fractional ownership of luxury resort units around the world.” [emphasis added]

“Currently we have the following assets under management:

- Puerto Aventuras (Mexico) project
- Monarch Cancun (Mexico) project
- ...

“Puerto Aventuras (Mexico)

- We have existing units and are building 200 more
- Value = \$100M USD”

“Monarch Cancun (Mexico)

- 200 units situated on a pristine/unspoiled tract of 4,500 acres
- Value = \$100M USD”

[76] Ciccone testified that investors were told during meetings or events that funds would be used to purchase properties for the Projects and were shown those properties. Despite Ciccone’s assertion that references to other investment opportunities were made to investors, it is clear, from the responses provided by an investor, L.M., during her voluntary interview with Staff, that the representations to investors regarding the use of

funds mainly relate to the purchase of properties for the Projects. This investor informed Staff that she understood that investor funds would be used for real estate development and that there were no discussions that investor funds would be used for anything else.

[77] Although, as noted by Staff, it is not possible to directly identify the ultimate use of the majority of investor funds as a result of the commingling of funds, the large majority of funds deposited into the Medra Accounts were investor funds and Staff's flow of funds analysis shows that some of the funds raised from investors were not used to purchase properties for the Projects as represented to investors. For example, Staff's flow of funds analysis shows that, on a net basis, amounts totalling \$913,612.18 and US\$142,621.41 were transferred from the Medra Accounts to the Ciccone Group Accounts. Ciccone admitted in his testimony that investor funds were transferred from the Medra Accounts to the Ciccone Group Accounts, however, investors were never informed that their funds would be transferred to Ciccone Group.

[78] Staff's flow of funds analysis further shows that some of the investor funds that were transferred to the Ciccone Group Accounts were not applied to the purchase of properties for the Projects. For example, as referred to in paragraph [43] above, \$800,000 of investor funds deposited into the Medra Accounts was transferred on April 24, 2008 to the Ciccone Group Accounts and US\$800,000 was transferred on the same day from the Ciccone Group Accounts to an account held by Axxess Automation to be invested with Axxess Automation. In addition, as referred to in paragraph [37] above, Ciccone in his testimony acknowledged that funds that he considered to be funds raised from the sale of Medra treasury shares flowed from the Medra Accounts to the Ciccone Trading Accounts through the Ciccone Group Accounts and the Ciccone Personal Accounts, and those funds were used to purchase Medra shares on the Pink Sheets in order to "increase the value of [Medra] shares" (Hearing Transcript dated November 29, 2012 at p. 91). Staff's analysis shows that, from January 2, 2009 to October 21, 2009, Ciccone spent over \$1.5 million to purchase Medra shares on the Pink Sheets through the Ciccone Trading Accounts.

[79] Accordingly, I find that Medra made misleading or untrue statements regarding the use of investor funds and engaged in acts of deceit or falsehood.

[80] The use of investor funds in the manner described above caused deprivation to investors. While it would be preferable to receive evidence from Staff regarding whether the funds raised from the distribution of Medra shares have been returned to investors, I accept Staff's submission that investors were exposed to risks of loss that were not contemplated by them when they provided funds to Medra for the purpose of investing in real estate or resort development as represented to them (see *Re Borealis* (2011), 34 O.S.C.B. 777 at paras. 107 and 108).

[81] As found in paragraphs [75] and [76] above, investors were told by Medra representatives and Ciccone that their funds would be used for real estate or resort development. During the Material Time, funds were nonetheless authorized to be transferred from the Medra Accounts by Ciccone, Medra's directing mind and the sole signing authority for the Medra Accounts during the Material Time, to be invested with

Access Automation and to be used for the purchase of Medra shares on the Pink Sheets, contrary to the representations made to investors. I find that Medra's directing mind, and accordingly, Medra, knew that the representations to investors regarding the use of funds were false and misleading and would cause deprivation to investors by exposing them to risks not contemplated by them.⁶

[82] Based on the foregoing, I find that Medra knowingly engaged in fraud, contrary to section 126.1(b) of the Act and contrary to the public interest.

E. Did Medra engage in a course of conduct related to its securities with a view of creating a misleading appearance of trading activity or an artificial price for those securities, contrary to the public interest?

[83] Ciccone testified that he purchased Medra shares on the Pink Sheets using funds that he considered to be funds raised from the distribution of Medra shares and accumulated a fairly sizable holding of Medra shares as a result. He testified that funds flowed ultimately to the Ciccone Trading Accounts from the Medra Accounts for the purpose of purchasing Medra shares in the secondary market. He further testified that he understood that the purpose of purchasing Medra shares in the secondary market was "to increase the value of [Medra] shares" (Hearing Transcript dated November 29, 2012 at p. 91). According to Ciccone, he was instructed by Gel to buy a certain number of shares on a certain day at a certain price, and Gel would cause the value of the shares to increase in the secondary market. As set out in paragraph [39] above, Ciccone testified that the price of Medra shares on the Pinks Sheets rose from \$0.50 per share to a high point \$3.28 per shares.

[84] Staff introduced affidavit evidence and analysis to show that Ciccone made various purchases of Medra shares on the Pink Sheets at different prices on the same day. For example, account statements for the Ciccone Trading Accounts show the following purchases of Medra shares on May 13, 2009: 500 shares at \$3 per share, 750 shares at \$3 per share, 21,500 shares at \$2.95 per share, 250 shares at \$3.05 per share, 50 shares at \$3 per share, 250 shares at \$3 per share, 500 shares at \$2.90 per share, 1,500 shares at \$3 per share and another 1,500 shares at \$3 per share. Staff's analysis shows that, from January 2, 2009 to October 21, 2009, Ciccone spent over \$1.5 million to purchase over 553,000 Medra shares in the secondary market through the Ciccone Trading Accounts.

[85] It is clear from the evidence above that the purchase of Medra shares by Ciccone using funds that Ciccone considered to be raised from the distribution of Medra shares was done with a view to increase the price of Medra shares and not for any legitimate purpose. Accordingly, I find that Medra, acting through Ciccone who was Medra's directing mind during the Material Time, engaged in a course of conduct related to its securities with a view of creating a misleading appearance of trading activity or an artificial price for those securities, contrary to the public interest.

⁶ I make these findings with respect to Ciccone's role as an officer and director of Medra only, not in his personal capacity, and for the purpose of determining corporate liability of Medra. These findings are consistent with Ciccone's admissions in his settlement agreement with Staff.

VII. CONCLUSION

[86] For the reasons set out above, I find that:

- (a) Medra traded, and engaged in the business of trading, securities without registration, contrary to subsection 25(1)(a) of the Act, as that subsection existed prior to September 28, 2009, and subsection 25(1), on and after September 28, 2009, and contrary to the public interest.
- (b) Medra engaged in a distribution of securities without filing a prospectus, contrary to subsection 53(1) of the Act and contrary to the public interest;
- (c) Medra engaged in fraud, contrary to section 126.1(b) of the Act and contrary to the public interest; and
- (d) Medra engaged in a course of conduct related to its securities with a view of creating a misleading appearance of trading activity or an artificial price of those securities, contrary to the public interest.

[87] I will issue an order dated June 18, 2013 which sets down the date for the written submissions and the hearing with respect to sanctions and costs in this matter.

DATED at Toronto on this 18th day of June, 2013.

“Vern Krishna”

Vern Krishna, C.M., Q.C.