Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
22nd Floor
20 Queen Street West
Toronto ON M5H 3S8
22e 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

ALEXANDER CHRIST DOULIS
(aka ALEXANDER CHRISTOS DOULIS,
aka ALEXANDROS CHRISTODOULIDIS)
and LIBERTY CONSULTING LTD.

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

Hearing:	October 7, 2014	
Decision:	December 22, 2014	
Panel:	Vern Krishna, CM, QC, LSM	- Commissioner and Chair of the Panel
Counsel:	Sean Horgan	- For Staff of the Commission
Appearances:	Alexander Doulis	- Self-represented
		- No one appeared for Liberty Consulting Ltd.

TABLE OF CONTENTS

REASONS AND DECISION ON SANCTIONS AND COSTS

I. OVERVIEW

A. History of the Proceedings

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), to consider whether it is in the public interest to make an order with respect to sanctions and costs against Alexander Doulis ("**Doulis**") and Liberty Consulting Ltd ("**Liberty**", and together the "**Respondents**").

[2] On March 10, 2011, a different panel of the Commission heard Staff's application for a temporary order (the "**Temporary Order Hearing**") that the Respondents cease trading in securities and acquiring any securities except for the benefit of Doulis personally or that of his spouse, and that any exemptions contained in Ontario securities law do not apply to the Respondents. The application was granted except that the request for a temporary order prohibiting acquisition of securities was declined in absence of submissions as to whether the Act gave the Commission authority to issue such order on a temporary basis (Merits Decision, *supra* at para. 5).

[3] The hearing on the merits in this matter took place on February 4, 7, 8, 11 and 13, April 3, 4 and 5, and July 3 and 30, 2013 (the "**Merits Hearing**"). Doulis appeared and participated in the Merits Hearing. Liberty, the other respondent, did not participate in the proceeding. The Reasons and Decision on the merits was issued on September 18, 2014 (*Re Alexander Christ Doulis and Liberty Consulting Ltd* (2014), 37 OSCB 8911 (the "**Merits Decision**")). The Commission issued a Notice of Hearing and an order, both dated September 18, 2014, that the hearing with respect to sanctions and costs be held on October 7, 2014 as an electronic hearing (the "**Sanctions and Costs Hearing**") where only the Panel would participate via teleconference.

[4] The Notice of Hearing dated September 18, 2014 included notice that "a party who objects to the hearing on sanctions and costs being conducted by way of an electronic hearing where only the Panel will participate via teleconference, shall file and serve a notice of objection setting out the reasons for the objection within 5 days after receiving this notice of electronic hearing". Neither party objected to the Sanctions and Costs Hearing being conducted as an electronic hearing.

B. The Sanctions and Costs Hearing

[5] Staff filed its written submissions dated September 24, 2014, a Brief of Authorities and a Bill of Costs, which includes an Affidavit of Laura Fisher sworn September 24, 2014 (the "**Fisher Affidavit**"). Staff filed the Affidavit of Tia Faerber sworn September 26, 2014 (the "**Faerber Affidavit**") evidencing service of Staff's written submissions, Brief of Authorities and Bill of Costs which includes the Fisher Affidavit, on the Respondents.

[6] Doulis provided written submissions filed and dated September 29, 2014, and provided a page concerning the profile on Linked In of a former investigator of the Commission, Mr. Larry Masci.

[7] On October 7, 2014, the Commission held the Sanctions and Costs Hearing. Staff and Doulis appeared and made submissions. Doulis appeared in person on his own behalf, and no one appeared for Liberty.

[8] At the Sanctions and Costs Hearing, Staff made submissions on its efforts to serve all the Respondents with its written submissions, Brief of Authorities and Bill of Costs. I was satisfied, based on Staff's submissions and the Faerber Affidavit, that Liberty and Doulis received notice of the Sanctions and Costs Hearing and that I could proceed in the absence of these respondents, in accordance with section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, and Rule 7.1 of the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168 (the "**Rules of Procedure**").

II. THE MERITS DECISION

[9] From January 1, 2004 to September 2010 (the "**Material Time**"), the Respondents engaged in the business of advising with respect to investing in, buying or selling securities without being registered in accordance with Ontario securities law in any category of adviser. Between July 2009 and September 2010, Doulis made statements to Staff 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 facts that were required to be stated or that were necessary to make the statements not misleading.

[10] The evidence presented at the Merits Hearing demonstrated that, during the Material Time, the conduct of the Respondents had a significant and substantial connection to Ontario (Merits Decision, *supra* at para. 24). There was clear and convincing evidence that on a balance of probability, each of the Respondents acted as an advisor to Ontario investors without being registered. Each of the Respondents should have taken the necessary steps to ensure that the proper registrations were in place and that their activities were in compliance with Ontario securities law (Merits Decision, *supra* at para. 212).

[11] Doulis acted as a portfolio manager, which is a category of advisor for registration, for the purpose of managing the investment portfolios of clients through discretionary authority granted to him by each client through a Power of Attorney ("**POA**"). Doulis offered this advice in a manner that reflected a business purpose (Merits Decision, *supra* at para. 211).

[12] Doulis prepared and sent invoices to clients for the discretionary account management services he provided through Liberty and charged client for 'portfolio services' (Merits Decision, *supra* at para. 211). Doulis used Liberty as a vehicle to collect the fees that he charged for his advising of clients.

[13] As a former registrant, having previously passed the Chartered Financial Analyst exam, among other things, Doulis had a higher level of awareness of the requirements under Ontario securities law and knew or ought to have known the importance of those requirements to the capital markets in Ontario.

[14] Doulis held POAs over the accounts of 12 individuals and corporations at Desjardins Securities Inc. (Merits Decision, *supra* at para. 217). He did not discuss any purchase or sale of securities with any of the clients but relied on the discretionary authority that the POA form provided to him.

[15] Doulis established the business of Liberty which he used to promote securities and to buy and sell securities on behalf of clients. Liberty, by Doulis' own admission paid him a retainer to advise them on the state of Canadian capital markets (Merits Decision, *supra* at para. 224). Each of the investor witnesses called during the Merits Hearing (the "**Investor Witnesses**") testified that they paid a half of one percent of the value of their respective portfolios at the end of the year to Liberty (Merits Decision, *supra* at para. 233).

[16] Doulis made numerous false and misleading statements to Staff, and falsely minimized his role with Liberty. He said that he did not send, nor was he aware that anyone had sent, invoices to the clients. Doulis said that he did not know what remuneration Liberty received; and that he was not being paid directly or indirectly by any of the clients (Merits Decision, *supra* at para. 251).

[17] Doulis also misled Staff during a phone interview by stating that he provided no services to clients and that they do not pay him a dime (Merits Decision, *supra* at para. 253), and during compelled examination by minimizing his role at Liberty (Merits Decision, *supra* at para. 254).

[18] I found that Doulis was the directing mind of Liberty and remained the directing mind during the Material Time notwithstanding that he transferred his formal ownership of Liberty to the Paladin Trust (Merits Decision, *supra* at para. 259). Staff provided evidence consisting of a series of emails that showed Doulis directed funds of Liberty (Merits Decision, *supra* at para. 255), transferred funds from bank accounts to brokerage accounts belonging to Liberty, and that Doulis was at various times, the sole director and president of Liberty, including establishing the accounts belonging to Liberty (Merits Decision, *supra* at para. 257).

[19] Doulis made inconsistent statements with regards to providing investment advice. In particular, he testified in the Temporary Order Hearing that he had provided investment advice to two investors and they each paid Liberty. Then, in the Merits Hearing, Doulis explained that the investors were paying for Liberty's services and not for investment advice. Doulis also testified that investors were paying Liberty for services he performed for them (Merits Decision, *supra* at para. 266 citing Transcript of the Temporary Order Hearing and Transcript of the Merits Hearing). Doulis also made inconsistent statements about his relationship with Liberty, (Merits Decision, *supra* at paras. 267-269), and among others, about his relationship with Investor Witnesses (Merits Decision, *supra* at para. 270).

[20] In the Merits Decision, I concluded that:

> (a) between January 1, 2004 and September, 2010, Doulis and Liberty engaged in the business of advising with respect to investing in, buying or selling securities without being registered in accordance with Ontario securities law in any category of adviser, contrary to subsection 25(3) the Act, previously subsection 25(1)(c) of the Act;

(b) between July 2009 and September 2010, Doulis made statements to Staff 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 facts that were required to be stated or that were necessary to make the statements not misleading, contrary to s. 122(1)(a) of the Act; and

(c) Doulis and Liberty acted contrary to the public interest.

(Merits Decision, *supra* at para. 274)

[21] During the Merits Hearing, Doulis submitted that Staff's conduct violated his rights pursuant to subsections 11(b) and 11(c) of the *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11* (the "**Charter**"). Doulis submitted that he was denied his right to be tried within a reasonable amount of time, and that Staff placed him in a position that he had to testify in the Merits Hearing contrary to Charter principles by virtue of not calling Mr. Larry Masci as a witness. Staff submitted that section 11 of the Charter is not applicable in the regulatory proceeding and that the activities of the Commission are not punitive (Merits Decision, *supra* paras. 156 and 158).

[22] Relying on *R v. Wigglesworth* (1987) 2 SCR 54 and *R v. Morin*, [1992] 1 SCR 771, I noted that the onus is on Doulis to prove that the regulatory offence is punitive in nature, and that prejudice has occurred. Having heard the submissions of Doulis and Staff, I found that administrative proceedings of this nature are not captured by section 11 of the Charter, and that the penalties sought by Staff are not penal in nature (Merits Decision, *supra* at para. 161). I noted in the Merits Decision at paragraphs 163-165, that this finding is consistent with other decisions of the Commission where the Commission held that a hearing under section 127 of the Act is fundamentally regulatory and it does not engage the Charter (*Re Rowan* (2010), 33 OSCB 1589 ("***Rowan***"); *Re Boock* (2010), 33 OSCB 1589; *Re Cornwall* (2008), 31 OSCB 4840). I addressed these Charter arguments in the Merits Decision, and there were no other Charter arguments raised in the Sanctions and Costs Hearing.

[23] I also reminded Doulis in the Sanctions and Costs Hearing that there is no property in a witness. The Commission and the courts have recognized the maxim that there are no property rights in a witness (See *Re Mega-C Power Corp.*, (2010) 33 OSCB 8290 at para 314; *Cairns v Mississauga (City)* [2006] OJ No 454 (Div Ct)). Doulis cannot tell Staff how to conduct its case, and who to call as a witness. Doulis was free to call any witnesses he chose to support his position in response to the allegations. It was open to Doulis to call Larry Masci as a witness, and he did not do so.

III. THE POSITION OF THE PARTIES

A. Staff's Submissions

[24] Staff requests the following sanctions against the Respondents and submits that these sanctions are appropriate and in the public interest:

(a) an order pursuant to clause 2 of subsection 127(1) of the Act that trading in any securities by Doulis and Liberty shall cease permanently;

(b) an order pursuant to clause 2.1 of subsection 127(1) of the Act that the acquisition of any securities by Doulis or Liberty is prohibited permanently;

(c) an order pursuant to clause 3 of subsection 127(1) of the Act that any exemptions in Ontario securities law do not apply to Doulis or Liberty permanently;

(d) an order pursuant to clause 6 of subsection 127(1) of the Act that Doulis be reprimanded;

(e) an order pursuant to clause 7 of subsection 127(1) of the Act that Doulis resign any position that he holds as a director or officer of an issuer;

(f) an order pursuant to clause 8 of subsection 127(1) of the Act that Doulis be prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) an order pursuant to clause 8.5 of subsection 127(1) of the Act that Doulis be prohibited permanently from becoming or acting as a registrant, an investment fund manager or as a promoter;

(h) an order pursuant to clause 9 of subsection 127(1) of the Act that Doulis pay an administrative penalty of $200,000 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(i) an order pursuant to clause 9 of subsection 127(1) of the Act that Liberty pay an administrative penalty of $100,000 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(j) an order pursuant to clause 10 of subsection 127(1) of the Act that Doulis and Liberty jointly and severally disgorge to the Commission a total of CDN $37,696 and USD $8,454, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(k) an order pursuant to subsections 127.1(1) and (2) of the Act that Doulis and Liberty jointly and severally pay investigation and hearing costs in the amount of $302,959.78.

B. Respondents' Submissions

[25] Doulis submits that no sanctions be ordered against him, and that the following sanctions be ordered against Staff:

(a) Punitive damages of $500,000 to be paid to Doulis for reputational damage and as punishment for the egregious behaviour of Staff;

(b) Costs in the amount of $32,216 to be paid to Doulis for legal fees and $48,000 for Doulis' time and efforts;

(c) Criminal action be brought by the Commission against Larry Masci for violations of sections 362 and 374 of the *Criminal Code* of Canada;

(d) Criminal action be brought by the Commission against Jonathon Feasby for violations of Sections 362, 374 and 423 of the *Criminal Code* of Canada; and

(e) An action by the Commission against Jonathon Feasby for violation of section 122(1)(a) of the Act.

[26] Doulis submits that the Panel did not find him guilty of advising. Doulis states that it was probable but not necessarily proven that he engaged in advising. Doulis submits that no proof exists that he provided investment advice.

[27] Doulis requests the sanctions and costs against Staff because he submits that he was victimized by the continual abuse of the *Criminal Code* of Canada by Staff and that the Commission was negligent, if not aware, of the criminal actions of its employees. Doulis submits that Staff was unaware, but should have been aware, that it is a criminal offence in the Turks & Caicos Islands to disclose either bank or corporate information of a domiciled company over which one is not a director. Doulis submits that Staff persisted in counseling criminal behavior and subsequently committed a criminal act to obtain what they wanted.

[28] Doulis denies the sanctions requested by Staff because he submits that it would cause serious harm to the investing public by removing a champion of theirs from the investing arena. Doulis submits that he has to be available to investors as an attorney for them to seek protection from unscrupulous individuals working in the investment industry, as neither the Commission nor IIROC seems willing to do so.

[29] Doulis submits that investors in Ontario have asked Doulis to continue being their attorney and that their investment objectives would best be served by an honest and independent individual to act on their behalf.

[30] Doulis submits that he believed he did not have to waste either his or the Commission's time answering questions about issues that had already been satisfied in his favour by the Chief Operating Officer at Desjardins Securities and IIROC. Doulis submits that both of these institutions were accepting of Doulis' role as an attorney through the use of Powers of Attorney and that no advising was being undertaken.

[31] Doulis submits that Staff did not provide evidence that Doulis and Liberty obtained a minimum of approximately CDN $37,696 and USD $8,454 from investors in fees for their illegal advising. Doulis submits that no bank records for either Doulis or Liberty have been entered as evidence. Doulis submits that Staff did not show that the invoices issued were in fact paid and to what extent the funds were received and who received them.

[32] Doulis submits that Staff prolonged the hearing by attempting to hide facts, being unfamiliar with foreign corporations, committing fraud, lying at the hearing and coercing witnesses.

[33] Doulis submits that there is no evidence that investors were being harmed and there was no interference with free and fair markets, and that no punishment of the Respondents is acceptable. Rather, he states that sanctions and penalties sought by Doulis should be imposed on Staff to deter further criminal activities.

IV. ANALYSIS

A. The Applicable Law on Sanctions

[34] The Commission's mandate, set out in section 1.1 of the Act, is to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets.

[35] In making an order in the public interest under section 127 of the Act, the Commission's jurisdiction should be exercised in a protective and preventative manner. As expressed in the oft-cited decision of *Re Mithras Management Ltd.*:

> …the role of this Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts...We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611)

[36] This view was endorsed by the Supreme Court of Canada in the following terms:

> …the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the [Commission] under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.
>
> (*Re Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 ("***Asbestos***") at para. 43).

[37] The Supreme Court of Canada has also recognized that general deterrence is an important factor in imposing sanctions by stating that "…it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (*Re Cartaway Resources Corp.*, [2004] 1 SCR 672 at para. 60).

[38] In determining the nature and duration of sanctions, the Commission has considered the following factors:

(a) the seriousness of the allegations proved;

(b) the respondents' 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 (or loss) avoided from the illegal conduct;

(i) the size of any financial sanction or voluntary payment when considering other factors;

(j) the effect any sanction might have on the livelihood of the respondent;

(k) the restraint any sanction 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 OSCB 7743 at 7746-7747; *Erikson v. Ontario (Securities Commission),* [2003] OJ No. 593 (Div Ct) ("***Erikson***"); *Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 ("***M.C.J.C. Holdings***") at 1136).

[39] In determining the appropriate sanctions to be ordered, the Commission will also consider the specific circumstances in each case and ensure that the sanctions are proportionate to those circumstances (*M.C.J.C. Holdings*, *supra* at 1134).

[40] The Commission has held that the overall financial sanctions imposed on each respondent is a relevant consideration in imposing administrative penalties and disgorgement (*Re Sabourin* (2010), 33 OSCB 5299 ("***Sabourin***") at para. 59). Further, the Commission held in *Sabourin* that in imposing financial sanctions, overall financial sanctions imposed on each respondent is a relevant consideration (*Sabourin, supra* at para. 74).

B. Relevant Sanctioning Factors

[41] In considering the factors set out in paragraphs 36 to 39 above, I find the factors summarized in the following paragraphs to be relevant to the circumstances of the Respondents.

1. Seriousness of the Allegations Proved

[42] The seriousness of the allegations proved arises from Doulis' numerous attempts to mislead Staff in their investigation. The Respondents' breaches of the Act are both independently and collectively, serious breaches.

[43] The Commission has held that the act of misleading Staff is a particularly egregious violation of the public interest (*Re Moncasa Capital Corp.*, 2013 LNONOSC 1025 ("***Moncasa***") at para. 21 citing *Re Koonar* (2002), 25 OSCB 2691 at 2692). Doulis made numerous false and misleading statements to Staff including under oath, and in compelled examination (Merits Decision, *supra* at paras. 250, 251-262). Respondents' unregistered advising and Doulis' misleading statements caused harm to the reputation and integrity of the capital markets.

2. The Respondent's Experience in the Marketplace

[44] The Commission has held that a breach of Ontario securities law by a registrant is serious because the offender is aware of the importance of securities law for the capital markets (*Moncasa*, *supra* at para. 21; *Rowan*, *supra* at para. 145). The Commission has found that a person's higher level of awareness of securities law requirements and the importance of those requirements to the capital markets is an important consideration to take into account when imposing sanctions.

[45] Doulis was a registrant for 10 years and is a highly sophisticated and knowledgeable participant in the capital markets (*Merits Decision*, supra at paras. 9 and 87). Doulis had a higher awareness of the requirements under Ontario securities law and knew or ought to have known the importance of those requirements to the capital markets of Ontario (Merits Decision, *supra* at paras. 9 and 212). The fact that Doulis proceeded with his unregistered advising despite his higher awareness of the impact that his actions would have on the capital markets, is an important consideration when ordering sanctions.

[46] Despite his vast experience in the capital markets, Doulis did not determine his clients' individual investment objectives and risk tolerance, and stated that his clients' investment objectives are what he believes is best for them (Merits Decision, *supra* at para. 89). This is not the level of attention that would be expected of a registrant towards his or her client.

3. Mitigating Factors and Remorse

[47] Apart from the Respondents not having any prior history of misconduct with the Commission, there were no other mitigating factors put forward at the Sanctions and Costs Hearing.

[48] The actions of Doulis during the investigation and litigation phases provide no basis to conclude that he has recognized the seriousness of his improprieties or that he has any remorse

for the consequences of his conduct. There was no evidence during the Sanctions and Costs Hearing suggesting that Doulis had any remorse. Rather, Doulis was contemptuous of Staff. Doulis made misleading statements to Staff at various stages, including when he was under oath (Merits Decision, *supra* at para. 250). Instead of recognizing the seriousness of his improprieties, Doulis misled Staff and did not take responsibility for his actions. Rather, Doulis blamed Staff for an "attitude…of vindictiveness" (Transcript of Sanctions and Costs Hearing, October 7, 2014, p. 25, lines 21-25).

[49] During the course of the Sanctions and Costs Hearing, Doulis challenged the findings of the Panel in the Merits Decision (Transcript of Sanctions and Costs Hearing, October 7, 2014, p. 22, lines 17-20; p. 23-24; and p. 26, lines 10-16) submitting, *inter alia*, that there is only "a likelihood that Doulis violated the Act". Doulis submitted that the Panel did not find Doulis guilty of advising, and that it was probable but not necessarily proven that Doulis violated the Act. In the Merits Decision, the Panel applied the standard of proof in Commission proceedings as being proof on a balance of probabilities, scrutinizing the evidence with care in deciding whether the alleged events are more likely than not to have occurred (Merits Decision, *supra* at paras. 14-16). The Panel was satisfied on that test that all of Staff's allegations were proven against the Respondents.

4. Violations were Isolated or Recurrent

[50] The Commission has considered a number of factors in assessing the scale of a respondent's misconduct including the number of investors affected, whether the misconduct was repeated, and the period of time in which it occurred.

[51] The Respondents engaged in unregistered advising from January 2004 to September 2010, nearly 7 years (Merits Decision, *supra* at para. 274). They bought and sold securities for 12 individuals and corporate clients and invoiced them for the management of the portfolio (Merits Decision, *supra* at para. 217). Doulis confirmed that at one point he was managing between $15 and $17 million in investor funds (Merits Decision, *supra* at para. 75). Doulis mislead Staff over a period of 14 months during Staff's investigation, and Doulis proactively sent the Commission misleading correspondence (Merits Decision, *supra* at para. 274). Accordingly, I find that the Respondents' violations were recurrent and it extended for a considerable amount of time.

5. Size of Any Profit or Loss Avoided from Illegal Conduct

[52] The invoices filed at the Merits Hearing allow a partial accounting of the funds obtained by the Respondents. The Respondents obtained a minimum of CDN $37,317 and USD $8,454, from the Investor Witnesses, in fees collected for unregistered advising.

[53] I have included a list of each invoice filed as evidence in the Merits Hearing:

Client	Date	Amount
Investor #2	January 21, 2005	USD $888

Investor #2	February 3, 2006	USD $2,112
Investor #2	January 2, 2007	USD $2,552
Investor #2	January 16, 2008	USD $2,902
Investor #2	February 18, 2009	CDN $2,313
Investor #4	January 20, 2010	CDN $26,913
Investor #2	January 19, 2010	CDN $3,217
Investor #3	February 16, 2011	CDN $1,193
Investor #1	November 14, 2011	CDN $3,681
TOTAL USD:		**$8,454**
TOTAL CDN:		**$37,317**

6. Reputation and Prestige

[54] Doulis referred to the reputation and prestige he enjoys as a former top ranked mining analyst and the author of several books (Merits Decision, *supra* at paras. 212 and 144). Indeed, he pointed to his reputation as an authority on financial matters as the major factor attracting clients to whom he provided unregistered advising (Merits Decision, *supra* at paras. 87, 68, 70 and 144). Accordingly, appropriate sanctions imposed on Doulis would send a message to future clients who may consider investing on the basis of his reputation.

7. Specific and General Deterrence

[55] The Respondents, and like-minded individuals, should understand that breaches of the Act similar to the ones involved in this case, including misleading Staff, will result in severe sanctions. I have reviewed the jurisprudence and there is a line of cases where the respondents were found to have engaged in unregistered advising, and fraud. In those cases, the Commission ordered permanent bans (*Re Bunting & Waddington Inc et al* (2014), 37 OSCB 3414; *Re New Hudson Television Corp. et al.* (2013), 36 OSCB 10455; *Re Shaun Gerard McErlean* (2012), 35 OSCB 9839; *Re Marion Gary Hibbert* (2012), 35 OSCB 9013; *Re Vincent Ciccone et al* (2012), 35 OSCB 8417). I note that in this case, there were no allegations, nor any finding, of fraud. I have also reviewed a line of cases where the respondent was found to have engaged in unregistered advising, in absence of fraud. Again, the Commission has ordered permanent bans

(*Re HEIR Home Equity Investment Rewards Inc et al* (2013), 36 OSCB 3485; *Re Maple Leaf Investment Fund Corp.* (2012), 35 OSCB 2809; *Re White* (2010), 33 OSCB 8893). Having reviewed the jurisprudence, I find that orders removing the Respondents from buying, selling, or trading in securities for 15 years without exception, imposing significant administrative penalties, and requiring disgorgement of fees collected from unregistered advising are proportionate to the Respondents' misconduct, and will send a message to like-minded individuals that involvement in this type of misconduct will result in severe sanctions. I arrived at a 15-year ban after taking into account that the Respondents have no prior history of misconduct with the Commission, that there was no allegation, nor any finding, of fraud, and that there was no evidence put forward of financial loss by investors. Nevertheless, the breaches of the Act are serious and justify sanctions based on the principles of specific and general deterrence.

C. Appropriate Sanctions in this Matter

1. Prohibitions on Participation in the Capital Markets

[56] The conduct of the Respondents caused harm to the integrity of the capital markets. Given the seriousness of the misconduct of the Respondents, sanctions in this case should send a strong message to both the Respondents and the public at large. As the Divisional Court has stated, "[p]articipation in the capital markets is a privilege, not a right" (*Erikson*, *supra* at para. 55).

[57] The registration regime attempts to ensure that those who engage in registerable conduct are not merely proficient, but of good character, satisfy appropriate ethical standards and comply with the Act. Doulis structured his affairs to deliberately circumvent securities legislation and the registration regime. I find that it is appropriate that the Respondents be subject to a 15-year trading, acquisition and exemption application bans, without exception.

[58] During the Sanctions and Costs Hearing, I noted that certain sanctions requested in Staff's written sanctions and costs submissions were not requested in the Notice of Hearing dated January 14, 2011, namely (i) that Doulis resign any position that he holds as a director or officer of an issuer; (ii) that Doulis be prohibited permanently from becoming or acting as a director or officer of any issuer; and (iii) that Doulis be prohibited permanently from becoming or acting as a registrant, an investment fund manager or as a promoter ("**Staff's New Sanctions Requests**").

[59] Staff submitted during the Sanctions and Costs Hearing that Doulis was provided notice upon receipt of the sanctions submissions of Staff, and that it is certainly not a prohibition to the Commission ordering those sanctions if the sanctions sought change throughout the hearing on the merits and into the sanctions hearing. Staff submits that the issue is appropriate notice and there is no requirement that notice be provided at the initiation of the proceedings.

[60] I do not agree with Staff's submissions on this issue. The Commission had held that it is not prepared to assume that Staff's New Sanctions Requests would not have affected the Respondents' approach to the Merits Hearing (*Re Factorcorp Inc.*, (2013) 36 OSCB 9582 ("***Factorcorp***") at para. 56). Rather, as the Commission held in *Re Rex Diamond Mining Corp.*, (2009) 32 OSCB 6467 ("***Rex Diamond***") and confirmed in *FactorCorp,* Staff should have amended the Notice of Hearing to include Staff's New Sanctions Requests prior to the Merits

Hearing (*Rex Diamond, supra* at para. 24; *Factorcorp, supra* at para. 56). Had Staff requested in the Notice of Hearing, the resignation of any position as director or officer of an issuer, and director and officer bans, my findings in the Merits Decision would have justified the imposition of such sanctions on the Respondents. However, in light of Staff's failure to seek these sanctions in the Notice of Hearing, I find that it would be unfair to impose them on the Respondents.

[61] I also find it appropriate to reprimand Doulis, pursuant to paragraph 6 of subsection 127(1) of the Act, in order to reaffirm that the Commission will not tolerate conduct such as occurred in this case.

2. Administrative Penalties

[62] The Commission's public interest jurisdiction allows it to impose sanctions under section 127 of the Act. Under paragraph 9 of subsection 127(1) of the Act, I am entitled to impose an administrative penalty of not more than $1 million in connection with each failure of the Respondents to comply with Ontario securities law. In the Merits Decision, I found that the Respondents engaged in unregistered advising, that Doulis made misleading statements to Staff, and that the Respondents' conduct was contrary to the public interest.

[63] Staff seeks an administrative penalty in the amount of $200,000 against Doulis and an administrative penalty in the amount of $100,000 against Liberty. Doulis submits that he pay no administrative penalty.

[64] The goals of specific and general deterrence are most effectively met by administrative penalties that are proportional to each respondent's culpability in the matter, taking all circumstances into account, considering administrative penalties imposed in similar cases and have regard to any aggravating and mitigating factors (*Belteco, supra* at 7747; *M.C.J.C. Holdings Inc. supra* at 1134 and 1136; *Re Limelight Entertainment Inc.*, (2008) 31 OSCB 12030 ("***Limelight***") at para. 71; *Rowan, supra* at para. 106; *Sabourin, supra* at para. 75).

[65] I have considered the Commission's prior case law in determining administrative penalties that are proportionate to the circumstances in this matter. Staff relied on *Re Norshield Asset Management (Canada) Ltd.* (2010), 33 OSCB 7171 ("***Norshield***") where the Respondents were also found to have made misleading statements to Staff. However, in that case, I note that the Respondents' conduct led to the loss of $159 million invested by close to 2,000 investors. In that case, the Commission ordered that the Respondents each pay an administrative penalty of $125,000 for making misleading statements to Staff, and maximum penalty was ordered against the Respondents for other breaches of the Act. The Commission also held that failing to inform Staff of an important component of the investment structure warrants a significant administrative penalty (*Norshield, supra* at paras. 106-107). In addition, the Commission has held that in imposing administrative penalties on respondents, the Commission considers it essential that market participants know that if they make misrepresentations to Staff of the Commission in their investigation…they do so at their own peril (*Limelight, supra* at para. 74).

[66] In *Moncasa*, the Commission found that the Respondents breached multiple sections of the Act, including misleading Staff, and ordered an administrative penalty of $400,000. In *Re Maple Leaf Investment Fund Corp.* (2012), 35 OSCB 3075 ("***Maple Leaf***"), the Commission found the Respondents breached two sections of the Act, including unregistered advising. In

Maple Leaf, the Commission ordered an administrative penalty in the amount of $200,000 for one of the Respondents who played an integral role in the promotion of bonds and facilitated the raising of $2,800,000, including making reference to his 16-year career as an officer to enhance his credibility and reliability with investors (*Maple Leaf, supra* at para. 8).

[67] Liberty and Doulis' actions caused harm to the capital markets. Accordingly, I find that it is appropriate and proportionate to the circumstances of each respondent to make an order against Doulis to pay an administrative penalty of $200,000 and a separate order against Liberty to pay an administrative penalty of $100,000. I find the amounts proposed by Staff to be within the range of penalties ordered by the Commission against respondents involved in similar misconduct, and proportional to the circumstances and conduct of each Respondent. The amounts paid to the Commission in satisfaction of the administrative penalties are designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

3. Disgorgement

(a) The Law on Disgorgement

[68] Pursuant to paragraph 10 of subsection 127(1) of the Act, if a person or company has not complied with Ontario securities law, the Commission may order the person or company to disgorge to the Commission "any amounts obtained as a result of the non-compliance". The Commission has described the purpose of the disgorgement remedy as follows:

> [T]he objective of the disgorgement remedy is to deprive a wrongdoer of ill-gotten gains, reflecting the view that it would be inappropriate for those who contravene Ontario securities law to be able to retain any illegally obtained profits…
>
> …
>
> [T]he legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the *Act* to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity…
>
> (*Limelight, supra* at paras. 47 and 49).

[69] The disgorgement remedy is intended to ensure that respondents do not retain any financial benefit from their non-compliance with the Act, and to provide specific and general deterrence (*Sabourin, supra* at para. 65).

[70] In *Limelight*, the Commission held that it should consider the following non-exhaustive list of factors when contemplating a disgorgement order, in addition to the general factors for sanctioning:

> (a) whether an amount was obtained by a respondent as a result of non-compliance with the *Act*;

(b) the seriousness of the misconduct and the breaches of the *Act* and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the *Act* is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

(*Limelight, supra* at para. 52).

[71] Staff has the onus of proving, on a balance of probabilities, the amounts obtained by a respondent as a result of its non-compliance with the Act.

(b) Submissions on Disgorgement

[72] In its submissions, Staff took the position that the Respondents should be ordered to disgorge the full and undiscounted amounts of CDN $37,696 and USD $8,454 on a joint and several basis, and submitted that these amounts are clearly ascertainable from Liberty's invoices and represent at minimum the amounts obtained by the Respondents as a result of their non-compliance with Ontario securities law. I am also satisfied that these amounts which are ascertainable are far less than the actual funds obtained based on Doulis' own statements having managed between $15 million and $17 million in investor funds. The Investor Witnesses called in the Merits Hearing were not able to provide a complete set of Liberty's invoices.

[73] Doulis submits that an order for disgorgement should not be made because there were no bank records for either Doulis or Liberty entered as evidence. Doulis submits that Staff did not show that the invoices were in fact paid and to what extent the funds were received, and by whom.

[74] I agree with Staff's submission that any amounts ordered against Liberty and Doulis should be imposed on a joint and several basis. Doulis controlled Liberty and was its directing mind. I therefore find that it is appropriate that any disgorgement amounts to be ordered against the Respondents shall be made jointly and severally against Doulis and Liberty.

(c) Appropriate Disgorgement Orders

[75] Unregistered advising activity and misleading Staff has been recognized as serious misconduct (*Re Arbour Energy Inc.,* 2012 LNABASC 266 at para. 84). I find that it is appropriate to impose disgorgement orders against the Respondents for the amounts they obtained through their serious misconduct.

[76] I do not accept Doulis' submission that the Commission should not order disgorgement because there are no bank records to show that he received the amounts. Notwithstanding the absence of such bank records, there was other ample evidence that Doulis had signing authority

and control over the two bank accounts, and that he directed Investor Witnesses to forward payment to Liberty (Merits Decision, *supra* at para. 261). Except for one payment, which has been excluded from the disgorgement order, there was no evidence of cancelled cheques. However, there was evidence from Investor Witnesses that they paid the invoices (Merits Decision, *supra* at paras. 107, 131, 140, 141, 223, 233 and 234). The payments were directed to Liberty, and Doulis controlled Liberty in an offshore jurisdiction. The only people who could produce bank records are Doulis and Liberty, and no such records were produced.

[77] Doulis was compensated through Liberty, as an adviser for the discretionary account management services he provided to each of the clients including the Investor Witnesses (Merits Decision, *supra* at para. 211). The Investor Witnesses testified that they paid Liberty for the services Doulis performed (Merits Decision, *supra* at paras. 107, 131, 140, 141, 223, 233 and 234). I also noted in the Merits Decision that I regarded the testimony of the Investor Witnesses as the most cogent and reliable evidence (Merits Decision, *supra* at para. 36).

[78] Staff also provided evidence in a series of emails that showed Doulis directed funds of Liberty to be deposited at Barclay's Bank, the transfer of CDN $24,000 from Liberty to Minotaur Capital, the transfer of USD $10,000 belonging to Liberty, the transfer of CDN $9,800 from the account of Liberty to the credit of A Christodoulidis (Merits Decision, *supra* at para. 255). Accordingly, I find on a balance of probabilities that the amounts obtained as a result of non-compliance with Ontario securities law are ascertainable, and were obtained by the Respondents.

[79] I find that it is appropriate to impose the following order against Doulis and Liberty to disgorge to the Commission CDN $37,317 and USD $8,454 on a joint and several basis. I have reduced the amount to be disgorged from Staff's submission of CDN $37,696 to CDN $37,317 because there was one invoice where the investor identified a cancelled cheque with respect to the payment made (Merits Decision, *supra* at para. 131). Accordingly, I have not included this amount in the calculation of the disgorgement order. Based on all of the evidence, I am satisfied on a balance of probabilities to impose such an order. The amounts paid to the Commission in satisfaction of the disgorgement orders are designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

4. Doulis' Requested Sanctions against Staff

[80] Doulis requests $500,000 in punitive damages for reputational harm and as punishment for egregious behavior of Staff. He also requests that criminal action be brought against Larry Masci and Jonathon Feasby. This is an administrative proceeding commenced pursuant to section 127 and section 127.1 of the Act, not an action for defamation. Doulis is within his legal rights to pursue any matters he sees fit in the courts. Actions for reputational damage and criminal action are not within the purview of this administrative proceeding, or within the authority of the Act. Accordingly, I see no basis in law to grant Doulis' request.

D. Costs

1. The Applicable Law

[81] Pursuant to section 127.1 of the Act, the Commission has authority to order a person or company to pay the costs of an investigation and hearing if the Commission is satisfied that the person or company has not complied with Ontario securities law or has acted contrary to the public interest. Factors to be considered by the Commission when awarding costs are set out in Rule 18.2 of the *Rules of Procedure*.

[82] Staff seeks to recover costs from the Respondents totaling $302,959.79, which consists of $297,132.50 in fees and $5,827.28 in disbursements. Staff requests that Liberty and Doulis be ordered to pay, on a joint and several basis, the full cost of the investigation and the Merits Hearing. Staff did not seek costs for time spent preparing for and attending the Sanctions and Costs Hearing, and the Temporary Order Hearing.

[83] In support of this request, Staff provided a Bill of Costs, which includes the Fisher Affidavit. The Fisher Affidavit appends detailed dockets of Staff, along with copies of receipts and invoices reflecting the costs of court reporters, process servers, witness fees and other expenses. The Bill of Costs employs the hourly rates approved by the Commission.

[84] Doulis requests that costs in the amount of $32,216 be paid to Doulis for legal fees and $48,000 for Doulis' time and efforts. In support of this request, Doulis submits that he was victimized by the continual abuse of the *Criminal Code* of Canada by Staff, and that the Commission was negligent.

2. Analysis

[85] The Commission has identified criteria that was considered in past decisions when awarding costs:

> (a) failure by Staff to provide early notice of an intention to seek costs may result in a reduced costs award;
>
> (b) the seriousness of the charges and the conduct of the parties;
>
> (c) abuse of process by a respondent may be a factor in increasing the amount of costs;
>
> (d) the greater investigative/hearing costs that the specific conduct of a respondent tends to require in the case; and
>
> (e) the reasonableness of the costs requested by Staff.
>
> (*Re Ochnik* (2006), 29 OSCB 5917 ("***Ochnik***") at para. 29).

[86] The purpose of sanction orders made under section 127 of the Act is to "restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets"

and to protect the public interest (*Asbestos*, *supra* at para. 43). On the other hand, the purpose of orders made under section 127.1 of the Act is to recover costs of a hearing or investigation from persons or companies who have breached Ontario securities law. It is recognized that a costs order will not necessarily recover the entirety of the costs incurred by the Commission in every case, but it is appropriate that a respondent contribute to the costs of a hearing where there has been a finding that the respondent has contravened securities law (*Re McErlean* (2012), 35 OSCB 9839 ("***McErlean***") at para. 24).

[87] In assessing the quantum of costs, the Commission is entitled to take into consideration whether the Respondents' conduct has contributed to the efficient hearing of the matter. However, requests for costs shall recognize the principle that something less than full indemnity is appropriate (*McErlean, supra* at para. 25).

[88] Applying the factors from *Ochnik* and the factors listed in Rule 18.2 of the *Rules of Procedure*, I find the following factors to be relevant in imposing a costs order against Liberty and Doulis:

(a) A Notice of Hearing was issued by the Commission on January 14, 2011 to notify the Respondents in this matter that Staff would be seeking investigation and hearing costs against them;

(b) The proceeding did not include any novel legal issues;

(c) Doulis repeatedly made allegations that Staff fabricated documents, lied, and committed criminal offences for which there was no evidence presented, nor were the claims substantiated;

(d) Doulis and Liberty made no factual or legal admissions;

(e) Doulis lengthened the hearing by giving inconsistent and conflicting evidence while under oath;

(f) Doulis filed different versions of his Charter argument with Staff and with the Commission causing an adjournment; and

(g) Doulis lengthened the hearing by accusing Staff of criminal conduct, all of which consumed hearing time and necessitated a response.

[89] The Commission recently held that an award of costs is a matter in Commission's discretion. While it is appropriate that respondents reimburse the Commission for costs incurred as a result of their misconduct, the Commission does not want to unduly penalize or discourage respondents through costs awards from bringing matters before the Commission that respondents wish to contest in good faith (*Re Crown Hill Capital Corp* (2014), 37 OSCB 7509 at para. 247).

[90] I have noted that Doulis' conduct unnecessarily lengthened the proceeding consuming 10 hearing days, for a matter that was not complex. Staff submitted at the Sanctions and Costs Hearing that the time and effort of Staff is a conservative estimation in terms of the full effort (Transcript of Sanctions and Costs Hearing, October 7, 2014, p. 20, lines 19-22). However, I do

not accept this submission. Rather, Staff is seeking full costs for investigation and hearing costs involving all investigators and counsel on the matter from April 27, 2009 to June 23, 2014. I also note that Doulis and Staff agreed that the documents admitted at the Temporary Order Hearing could be entered as evidence at the Merits Hearing. Indeed, Staff introduced five volumes of hearing briefs of which four volumes consisted of the hearing transcript of the Temporary Order (Merits Decision, *supra* at para. 34). Staff during the Sanctions and Costs Hearing submitted that they are not seeking the costs of Staff counsel for preparation time and conduct in the Temporary Order Hearing (Transcript of Sanctions and Costs Hearing, October 7, 2014, p. 20, lines 3-8).

[91] Taking into account the nature of the proceeding, and the right for a respondent to defend against Staff's allegations, a cost recovery of fees and disbursements in the amount of $198,619.78 on a joint and several basis against Liberty and Doulis, is fair and reasonable, and in the public interest. This amount includes only the time spent by two Staff investigators, Tom Anderson and Joan Chambers, who were called in the Merits Hearing, as well as the time spent by Jon Feasby, the lead Staff counsel on this matter. I have not included in the costs order any time spent by Larry Masci involved in the investigation, or by any other investigators, or any other Staff counsel. I arrived at this cost determination having considered the factors above, as well as the principle that something less than full indemnity is appropriate.

[92] I noted in paragraph 79 that the Commission has authority to order a person or company to pay the costs of an investigation and hearing if the Commission is satisfied that the person or company has not complied with Ontario securities law or has acted contrary to the public interest. There were no findings made by the Panel in the Merits Decision that Staff breached Ontario securities law or acted contrary to the public interest. Accordingly, I see no basis to order any costs sought by the Respondent.

V. CONCLUSION

[93] For the reasons set out above, I conclude that it is in the public interest to make the orders set out below. In my view, the sanctions imposed will deter the Respondents and other like-minded individuals from engaging in similar misconduct in the capital markets in the future and the sanctions are proportionate to the circumstances and conduct of each Respondent.

[94] I will issue a separate order giving effect to my decision on sanctions and costs as follows:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by each of Liberty and Doulis shall cease for a period of 15 years;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by each of Liberty and Doulis shall be prohibited for a period of 15 years;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to each of Liberty and Doulis for a period of 15 years;

(d) pursuant to paragraph 6 of subsection 127(1) of the Act, that Doulis be

reprimanded;

(e) pursuant to paragraph 9 of subsection 127(1) of the Act, Liberty shall pay an administrative penalty of $100,000 for its non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(f) pursuant to paragraph 9 of subsection 127(1) of the Act, Doulis shall pay an administrative penalty of $200,000 for his non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(g) pursuant to paragraph 10 of subsection 127(1) of the Act, Liberty and Doulis shall jointly and severally disgorge to the Commission a total of CDN $37,317 and USD $8,454 that was obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act; and

(h) pursuant to subsection 127.1 of the Act, Liberty and Doulis shall jointly and severally pay $198,619.78 for the costs incurred in this matter.

DATED at Toronto, this 22nd day of December, 2014.

"Vern Krishna"

_____

Vern Krishna, CM, QC, LSM