



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE,
SARBJEET SINGH, DIPAK BANIK,
STOYANKA GUERENSKA, SOPHIA NIKOLOV
and EVGUENI TODOROV**

**REASONS AND DECISION
(Section 127)**

Hearing: January 11, 13, 14 and 15, 2016

Decision: February 3, 2016

Panel: Alan J. Lenczner - Commissioner and Chair of the Panel
Judith N. Robertson - Commissioner
AnneMarie Ryan - Commissioner

Appearances: Christie Johnson - For Staff of the Commission
Christina Galbraith (student-at-law)

No one appeared on behalf of Setenterprice, Dipak Banik, Stoyanka Guerenska, Sophia Nikolov and Evgueni Todorov

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I. INTRODUCTION

- [1] The mandate of the Ontario Securities Commission (the "**Commission**") is to protect investors and to foster fair and efficient markets. It does so by registering only those that are properly qualified and satisfy appropriate ethical standards, and by ensuring that investors have appropriate disclosure of information to assess the risks and make informed investment decisions.
- [2] Unsuspecting members of the public are too often taken in by fraudsters and are unaware of the basic questions that they need to ask when anyone seeks money from them for investment purposes. Further, the temptation of abnormally high returns can motivate certain investors to override and ignore logic, prudence, common sense and scepticism.
- [3] Unregistered charlatans understand this allure and use their cunning, guile, and charm as well as outright deceit to attract susceptible people to loan them large sums of money which, they represent, will be deployed in unique trading strategies to garner the investor outsize returns.
- [4] The subject of this merits hearing was a classic example of fraud perpetrated on 12 investors through the means of illegal investment contracts and unregistered trading.
- [5] Fraud in securities law occurs when an act of deceit, falsehood or other fraudulent means is accompanied by actual loss, or risk of deprivation, and where the perpetrator has both subjective knowledge of the deceit and that, as a consequence, the act would put the contributed monies at risk.
- [6] In its Statement of Allegations, Staff alleged that:
- a) Evgueni Todorov ("**Todorov**") engaged in fraudulent conduct by misleading investors regarding the use of the investment monies,
 - b) Todorov, Sophia Nikolov ("**Nikolov**"), Dipak Banik ("**Banik**"), Stoyanka Guerenska ("**Guerenska**") and Setenterprice engaged in unregistered trading and the illegal distribution of securities, and
 - c) Nikolov, as the actual director, and Todorov, as the *de facto* director of Setenterprice, authorized, permitted or acquiesced to the illegal activities of the company.
- [7] All the necessary elements of fraud (*R. v. Theroux*, [1993] 2 S.C.R. 5 at 21) were firmly established as against the respondent Todorov by the evidence presented to the Panel.
- [8] The Panel also finds that the evidence supports the finding that Setenterprice, Banik, Guerenska, and Todorov engaged in unregistered trading and an illegal distribution of securities. The respondents Todorov and Nikolov failed in their responsibilities as corporate directors and permitted Setenterprice to contravene Ontario securities law. The conduct of these respondents was contrary to the public interest.

II. THE RESPONDENTS

- [9] Todorov is a resident of Toronto and has never been registered with the Commission in any capacity. He met his wife Nikolov, a Canadian citizen, in Bulgaria. They married in 1983 and Todorov immigrated to Canada in the mid-1980s. He worked for a period of time in a waste management firm, but since 2004, his main endeavour has been trading foreign currencies (forex trading).
- [10] Nikolov has worked for some 25 years at the Toronto Tourism and Trade Board. She incorporated a company, Setenterprice, in 2008, which describes its business in the formal records as 'trading'.
- [11] In the relevant period from November 2010 to June 2013, Setenterprice's director, officer and sole signing authority was Nikolov. From November 2010 to November 2012, Nikolov signed all the cheques issued from Setenterprice's bank account. From November 2012 onwards, Todorov also operated the account either by signing cheques or by transferring monies out by wire transfer. It is clear from the banking records and the compelled testimony of Nikolov that, at all material times, Todorov was the controlling mind behind Setenterprice and the *de facto* operator of its bank account.
- [12] Banik makes his living by referring individuals to real estate agents and mortgage brokers in return for a referral fee. Banik met Todorov when he managed a coffee shop owned by Todorov and they had an on-going business relationship thereafter. Banik referred three investors to Todorov who invested the sum of \$250,000.
- [13] Guerenska earns her living from various ventures including real estate transactions and referrals. She met Todorov at the Bulgarian consulate years earlier and they became casual acquaintances. The evidence demonstrates that she referred eight investors to Todorov, who invested the sum of \$925,000.
- [14] The respondents, Sarbjeet Singh ("**Singh**") and 2241153 Ontario Inc. ("**224**"), entered into a Settlement Agreement prior to the commencement of the merits hearing and are therefore no longer respondents in this matter.
- [15] None of the remaining Respondents (Todorov, Nikolov, Banik, Guerenska and Setenterprice) have ever been registered with the Commission in any capacity. As a result, none of them could legally trade or distribute securities.

III. THE MERITS HEARING

- [16] Although Todorov attended pre-hearing conferences, was provided with full disclosure of documents by Staff and was provided the hearing brief, he did not attend the hearing. Nikolov and her company, Setenterprice, also did not attend the hearing. At the opening of the hearing, an agent appeared on behalf of Todorov and Nikolov, requesting a one-week adjournment. The only submission he made was that Todorov and Nikolov were in Vancouver. The Panel determined that it was in the public interest to maintain the scheduled hearing date, (which was scheduled in September 2015, in Todorov's presence and without objection and was reconfirmed on December 9, 2015, again in his presence and without objection) and provided oral reasons why the request did not meet any of the criteria set out in Rule 9 of the Commission's *Rules of Procedure*. The agent left after the adjournment was denied. The Panel was also satisfied that all

Respondents in this matter were provided with adequate notice of the merits hearing.

- [17] The respondent Banik submitted an Agreed Statement of Facts, but did not attend.
- [18] The respondent Guerenska did not attend the hearing.
- [19] Staff of the Commission adduced oral evidence from three investor witnesses and Singh who was both an investor and former respondent. Evidence was also provided by a Staff investigator, including notes of her interviews with investors, and a Staff forensic accountant, who provided evidence of sources and uses of investor funds. Passages from the compelled testimony of Todorov, Nikolov and Guerenska were also placed in evidence.

IV. THE FRAUDULENT SCHEME

- [20] In total, twelve investors invested \$1,277,500 in the forex trading scheme operated by Todorov. Over the relevant period, Todorov directed investors to deposit monies through wire transfers, bank drafts and certified cheques into multiple bank accounts, all under his effective control.
- [21] Most of the investors were referred to Todorov by either Banik or Guerenska. Both Banik and Guerenska were offered and received referral fees for investors that made an investment with Todorov.
- [22] Banik referred three investors to Todorov who invested the sum of \$250,000. Banik received, at least \$104,700 from the forex trading scheme, including \$65,700 for these referrals.
- [23] Guerenska referred eight investors to Todorov, who invested the sum of \$925,000. She received \$53,568 as referral fees.
- [24] Banik and Guerenska preconditioned the investors to the opportunity and to Todorov by describing him as a person who had been trading forex for many years and who had been very successful. Guerenska told several investors that she had invested with Todorov for over a year and that he had a very low risk, highly profitable strategy for forex trading.
- [25] Once the prospective investor exhibited an interest in investing, either Banik or Guerenska would accompany Todorov to meet the investor at a coffee shop, their place of business or their home. The investor was then "pitched" by Todorov, who would indicate that he had been successful in forex trading, making in excess of 100% return per annum on the capital invested. He stated that, because of his particular strategy, there was little risk. The investors were told that they would receive a high rate of interest (between 5 and 10% per month) on money that they provided to Todorov and that he would be compensated by retaining any excess return. The promise of a 'guaranteed' return of 60% - 120 % per annum, encouraged the investor to believe Todorov's claims of success.
- [26] Investors were told that there was a minimum investment amount ranging from \$25,000 to \$100,000 and were instructed by Todorov on how to submit the funds. Several investors were encouraged to use their line of credit or refinance

their homes in order to raise the funds necessary to invest. Several investors did take on additional debt to invest with Todorov.

- [27] As evidence of their investment, each investor received and signed a Promissory Note drafted and produced by Todorov.
- [28] Todorov utilized two corporate vehicles to carry out his fraudulent scheme: Setenterprice, the company set up by his wife, Nikolov and 224, Singh's company.
- [29] Beginning in November 2010 and continuing until June 2013, eleven of the twelve investors gave Todorov monies which totalled \$1,077,500. Most of the funds were deposited into the Setenterprice bank account and \$65,000 was deposited into his own personal account. None of the money from this group of investors was used in any forex trading.
- [30] In November 2011, Todorov enlisted Singh (one of the eleven investors) and Singh's company 224 in his fraudulent trading scheme and gained access to 224. A new investor, P.D., invested \$200,000, which was placed into the 224 bank account. Withdrawals from that bank account were made at the direction of Singh who, in turn, was instructed by Todorov. \$170,000 was deposited into a trading account and used, for a brief period, for forex trading.
- [31] During the course of the fraudulent trading scheme, Todorov showed the investors trading account statements indicating 400-500 forex trades per day. Although these account statements showed healthy daily profits, they were statements from fictitious trading accounts, 'demo' accounts with simulated positions or an actual trading account from another individual. All statements showed positive balances and trading results, which Todorov represented as his actual trading results, but none were a truthful representation of what happened to investor funds.

V. IS THE PROMISSORY NOTE A SECURITY?

- [32] The Promissory Note was drafted as a loan from the investor and promised a high rate of interest of (5%, 6%, 7% and 10%) per month and the return of capital within one year. The borrower was either Setenterprice, or on one occasion, 224. The Setenterprice Promissory Note was signed by Todorov, who was neither an authorized signing officer nor a director of the company. The 224 Promissory Note was signed by Singh, but contemporaneously therewith and not within the presence of the investor, P.D., Todorov signed an acknowledgement that he was responsible for the repayment of monies loaned.
- [33] In order to be considered an investment contract in securities law, there must be an investment of money with an intention or expectation of profit. In addition, the role of the investor is limited to supplying the capital and the fortunes of the investor are dependent entirely on the efforts and success of those who are seeking funds. (see *Pacific Coast Coin Exchange of Canada v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112 at paras. 47-48 and *Re 2196768 (cob Rare Investments)* (2014), 37 O.S.C.B. 6281 at paras. 95-96)
- [34] Taking into account all the facts and the context of each Promissory Note, it is clear and established to the satisfaction of the Panel that each Promissory Note is an investment contract. The Promissory Note is but one element of an entire

scheme of investment and the provision of the monies is not merely the advancement of a loan. Investors were told and relied on the promise that his/her monies would be invested in forex trading. Each investor expected a sizeable profit emanating from such trading. The entire trading strategy was to be managed by Todorov in a common endeavour whereby he would profit from the excess over the committed return. We find that each Promissory Note is an investment contract and therefore a security as defined in the Act (section 1(1) paragraph n). If one trades in a security without being registered, or distributes securities to the public without a prospectus, this constitutes a breach of section 25 and section 53 of the Act, respectively, unless the respondent can demonstrate that an exemption is available.

VI. THE DECEIT

- [35] In spite of Todorov's representations, not one penny of the eleven investors' \$1,077,500 raised through the Promissory Notes issued by Setenterprice was ever used for the stated purpose of forex trading.
- [36] Todorov and Nikolov used the bulk of the monies from the Setenterprice bank account for purposes entirely extraneous to the purported forex trading scheme such as: personal expenses including car payments, condominium fees, credit card debt; payments to the Respondents; and, payments to third parties, some of whom had been investors in previous investment clubs and schemes managed by Todorov. A portion of the investor monies was paid to earlier investors in the scheme when they complained or threatened to call the Commission thus creating a Ponzi-like scheme where new investor funds were used to placate earlier investors.
- [37] The evidence also shows a similar pattern in all the bank accounts controlled by Todorov. Each deposit of investor funds was quickly followed by payments of personal expenses, payments to the Respondents or payments to other investors and typically, the account balance was depleted within a matter of days or weeks.
- [38] Of the \$1,277,500 raised from investors, the only money that was used for forex trading was a portion of the funds (\$170,000) deposited into the 224 account. On November 9, 2011, P.D. invested \$200,000 by wire transfer to the 224 bank account. Todorov then transferred \$170,000 of these monies to a trading account in the name of 224 at Forex Capital Markets Ltd. Over the next 21 days, \$150,000 was withdrawn from the 224 trading account, and re-deposited into the 224 bank account and then distributed to Setenterprice (controlled by Todorov) (\$69,000), Banik (\$59,000) and to Singh (\$49,000). PD only received one payment of the promised monthly returns.
- [39] When investors began complaining that they were not receiving their promised monthly returns, Todorov used various techniques to prolong his fraudulent scheme and to avoid its collapse. He obtained monies from new investors by continuing to misrepresent his success in forex trading and distributed some of those monies to those earlier investors who complained persistently and loudly. He told all investors that he had suffered a temporary loss in the Setenterprice trading account and could not withdraw monies, but that the situation would rectify itself shortly. He followed this lie up with showing investors fictitious

accounts on the letterhead of Easy Forex of Cyprus. The Cyprus Security Commission, with the cooperation of its registrant, Easy Forex, has confirmed that, at no time, was there ever an account with it for Todorov or Setenterprice and that the trading account statements were not from it or of its origination. Todorov also showed statements from "demo" accounts and trading accounts of another individual, (into which no investor funds were deposited), and passed off those accounts as the ones he was trading for the complaining investor.

- [40] By June 2013, the complainants could no longer be calmed and the money to keep the Ponzi scheme rolling had dried up.

VII. FINDINGS AGAINST THE RESPONDENTS

A. TODOROV

- [41] The evidence presented to the Panel established an ongoing fraud initiated and continued by Todorov from November 2010 to June 2013. That he was able to prolong the fraud for two and a half years results from Todorov's serial lies to investors, fictitious trading statements and the use of a Ponzi scheme to pay some monies to complaining investors from monies advanced to him by yet unsuspecting investors.
- [42] All the necessary elements of fraud in relation to securities law were firmly established as against Todorov by the evidence submitted at the hearing. We find that he perpetrated fraud on persons or companies contrary to s. 126(1)(b) of the Act.
- [43] We also find that Todorov traded, engaged in and held himself to be in the business of trading in securities while not registered, and engaged in a distribution of securities without a prospectus. He is in breach of s. 25(1) and s. 53(1) of the Act.
- [44] We also find that, Todorov used Setenterprice as a key component in his fraudulent scheme of unregistered trading and illegal distribution. Although Todorov was not named as a director or officer of Setenterprice, which is a company registered as a sole proprietorship under Nikolov, we find that his conduct demonstrated that he acted as a *de facto* director and officer of Setenterprice. Todorov was the mind and management of the company. Specifically, he directed and controlled the operations and actions of Setenterprice. He had control and signing authority of the bank account of Setenterprice, he signed promissory notes and directed investors to deposit those funds in the Setenterprice account and directed payments from the account. Accordingly, we find that Todorov permitted, authorized or acquiesced in Setenterprice's non-compliance with the Act, and in doing so Todorov is deemed not to have complied with Ontario securities law pursuant to section 129.2 of the Act.

B. BANIK

- [45] Banik signed an Agreed Statement of Facts in which he admitted that he traded in securities without being registered contrary to s. 25(1) of the Act and engaged in distributing securities without a prospectus contrary to s. 53(1) of the Act. On

the admitted facts and on the corroborative evidence presented, the Panel finds that Banik's conduct in referring investors to Todorov and in being paid a promised referral fee for each person who invested, together with his attendance at the investor meetings at the time of Todorov's representations and the signing of the Promissory Notes constitute acts in furtherance of a trade as defined in paragraph (e) of the definition of a "trade" or "trading" in subsection 1(1) of the Act and in the case law *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 at para. 131, *Re Momentas Corp* (2006), 29 O.S.C.B. 7408 at para. 80 and *Re First Federal Capital (Canada) Corp* (2004), 27 O.S.C.B. 1603 at paras. 45-46.

C. GUERENSKA

- [46] Guerenska preconditioned investors and introduced them to Todorov for the specific purpose that they should invest. Guerenska attended at meetings of investors when Todorov made his pitch thereby acquiescing in it and lending an air of credibility to Todorov, to the strategy and to the investment. She made the referral in anticipation of a fee and did receive a referral fee of approximately 6% of the amount invested through her. These facts are more than sufficient to constitute acts in furtherance of a trade.
- [47] On the evidence presented, the Panel finds that Guerenska's conduct in referring investors to Todorov and in being paid a promised referral fee for each person who invested, together with her attendance at investor meetings at the time of Todorov's representations constitute acts in furtherance of a trade. We find that she traded in securities without being registered contrary to s. 25(1) of the Act and distributed securities without a prospectus contrary to s. 53(1) of the Act.

D. NIKOLOV

- [48] The allegations against Nikolov are that she, too, breached s. 25(1) and s. 53(1) of the Act in that she acted in furtherance of a trade. We do not agree with Staff's position in this regard.
- [49] The definition of a trade in s. 1(1) of the Act must not be expanded beyond natural logic and common sense. The definition, although it encompasses an expansive catalogue of acts that can be considered furtherance of a trade, must not be used to capture any conduct, no matter how remotely related to a trade in securities.
- [50] Nikolov never met an investor, never solicited an investor, never negotiated with an investor and was not present when others, including her husband, were touting an investment in forex trading.
- [51] Nikolov did not set up a forex trading account either for Setenterprice or 224.
- [52] Simply put, her conduct had no significant connection to either an investor or to a trade or to a distribution. We find that she did not breach s. 25(1) or s. 53(1) of the Act.
- [53] Nikolov's conduct, however, is reprehensible and falls far short of her obligations as a company director. For two years in the relevant period, she signed cheques on the Setenterprice bank account at the direction and under the control of her

husband. Some of these cheques were to four of the eleven investors, particularly those who complained persistently, some were to Banik, and some were to repay third parties or investors from earlier involvement in other investment schemes managed by Todorov. From December 2012 onwards, she allowed her husband to sign cheques and operate the account. Given that, in the relevant period, approximately \$2,508,000 was withdrawn from the Setenterprice bank account, a sum far in excess of what she earned, and that some of these funds were used to pay for personal expenses, Nikolov should have questioned the source of these funds. If they were from legitimate trading profits, why did the account balance fluctuate wildly, why were cheques regularly written in excess of funds available, and why was there no proper accounting for the funds going in and coming out of the account? Why didn't her husband put his trading profits into his own bank account? And why, from December 2012, did she allow her husband, after several years, to operate her company's bank account at will? There are so many obvious significant suspicious circumstances that lead us to the conclusion that either Nikolov knew of her husband's fraudulent forex trading scheme, or was wilfully blind to it and facilitated its continued operation by assisting her husband through her company's bank account.

- [54] Absent any allegation of fraud against Nikolov, we find that Nikolov permitted, authorized or acquiesced in Setenterprice's non-compliance with the Act, and in doing so Nikolov is deemed not to have complied with Ontario securities law pursuant to section 129.2 of the Act

E. SETENTERPRICE

- [55] Setenterprice was a central component of the fraudulent trading scheme operated by Todorov. We find that the role played by Setenterprice included engaging in the business of trading without registration and distributing securities when a prospectus had not been filed (illegal distribution) in breach of sections 25(1) and 53(1) of the Act.

F. AMOUNTS OBTAINED BY BREACHES OF THE ACT

- [56] The amounts actually deposited by the investors to the bank accounts of Setenterprice, 224 and Todorov totalled \$1,277,500. \$371,909 was returned to some of the investors, including \$12,500 to Singh. Thus \$905,591 is the monetary amount taken from investors which has not been returned.

VIII. CONCLUSION

- [57] This case has highlighted the need for investors to understand the heightened risks associated with dealing outside of the protections offered by the registration regime. Frank and basic print and media warnings should be issued by the Commission urging the public to verify that any person that seeks money for investing purposes is registered with the Commission, as required by law. In our view, a stark but simple warning may prevent many fraudulent schemes.
- [58] We find that Todorov, Guerenska, Banik and Setenterprice breached sections 25(1) and 53(1) of the Act.

- [59] We find that Todorov has engaged in fraud in breach of section 126.1(b) of the Act and that Todorov and Nikolov are deemed responsible for the breaches of Setenterprice pursuant to section 129.2 of the Act.
- [60] We also find that the conduct of all Respondents was contrary to the public interest.
- [61] A hearing on sanctions and costs shall be held in writing. We order the following:
- (a) The Respondents have until February 12, 2016 to notify the Secretary of the Commission that they, or any of them, require an oral sanctions hearing, which, if required, will then be scheduled by the Secretary;
 - (b) Failing notification by the Respondents, Staff shall serve and file their written submissions on sanctions and costs by February 23, 2016;
 - (c) The Respondents shall serve and file their written submissions on sanctions and costs by March 9, 2016; and
 - (d) Staff shall serve and file reply submissions on sanctions and costs, if any, by March 15, 2016.

Dated at Toronto this 3rd day of February, 2016.

"Alan Lenczner"

Alan J. Lenczner

"Judith Robertson"

Judith N. Robertson

"AnneMarie Ryan"

AnneMarie Ryan