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Securities
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Citation: Natural Bee Works Apiaries Inc (Re), 2019 ONSEC 23

Date: 2019-07-03

File No. 2018-40

**IN THE MATTER OF
NATURAL BEE WORKS APIARIES INC., RINALDO LANDUCCI and
TAWLIA CHICKALO**

**REASONS AND DECISION
(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)**

Hearing: April 22, 23, 24, 25, 26 and May 23, 2019

Decision: July 3, 2019

Panel: D. Grant Vingoe Vice-Chair and Chair of the Panel

Appearances: Christina Galbraith For Staff of the Commission
Audrey Smith
(student-at-law)

Rinaldo Landucci For himself and Natural Bee Works
Apiaries Inc.

Tawlia Chickalo For herself

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REASONS AND DECISION

I. INTRODUCTION

- [1] On June 25, 2018, Staff of the Ontario Securities Commission issued a Statement of Allegations pursuant to ss. 127(1) and 127.1 of the *Securities Act*¹ (the **Act**) against the Respondents. According to the Allegations, Natural Bee Works Apiaries Inc. (**NBW**), Rinaldo Landucci (**Mr. Landucci**) and Tawlia Chickalo (**Ms. Chickalo**) (collectively, the **Respondents**) violated Ontario securities laws by:
- a. engaging in the business of trading in securities without the necessary registration or an applicable exemption from the registration requirement, contrary to s. 25 of the Act (Ms. Chickalo);
 - b. trading in securities that would constitute a distribution without a prospectus or an applicable exemption from the prospectus requirement, contrary to s. 53 of the Act (NBW and Ms. Chickalo);
 - c. representing that the securities of NBW will be listed on an exchange, contrary to s. 38(3) of the Act (all Respondents);
 - d. engaging or participating in an act, practice or course of conduct relating to securities that they know or reasonably ought to know perpetrates a fraud on any person or company, contrary to s. 126.1(1)(b) of the Act (all Respondents);
 - e. making statements that they knew or reasonably ought to have known were untrue or misleading and that would reasonably be expected to have a significant effect on the market price or value of the securities of NBW, contrary to s. 126.2 of the Act, by virtue of the statements made in marketing materials (all Respondents); and
 - f. authorizing, permitting or acquiescing in the non-compliance with the Act by NBW, contrary to s. 129.2 of the Act (Mr. Landucci).
- [2] The Commission conducted a hearing into the merits of these allegations over the course of six hearing days. Mr. Landucci, on his own behalf and on behalf of NBW, and Ms. Chickalo attended the hearing on the first day by telephone conference and then by video-conference for the following days. All Respondents were self-represented.
- [3] For the reasons that follow, I find that the Respondents engaged in a course of conduct that, in the case of Mr. Landucci and NBW, they knew, and in the case of Ms. Chickalo, she reasonably ought to have known, perpetrated a fraud on the NBW investors contrary to s. 126.1(1)(b) of the Act and that Staff has also proven the allegations with respect to ss. 25, 53, and 129.2 of the Act.

¹ RSO 1990, c S.5

II. BACKGROUND

A. The Respondents

1. NBW

[4] NBW was incorporated under British Columbia law on June 9, 2017 and has its registered office located at a law firm office in Burnaby, British Columbia (**BC**). NBW is apparently in the business of selling bee-related products as well as developing and marketing other products apparently created by Mr. Landucci. There was evidence that NBW sold candles and other products, primarily in craft markets in the Burnaby/Vancouver area. NBW has never been registered with the Commission.

2. Mr. Landucci

[5] Mr. Landucci is a resident of BC. He has never been registered with the Commission. Mr. Landucci is the sole director of NBW. Mr. Landucci controls NBW.

[6] His exact address is unclear since he never provided his address to the Commission, despite an undertaking and an order, dated July 19, 2018, that he do so (as discussed further below).

[7] He stated that he was a beekeeper, but failed to produce any documentation to demonstrate he was registered as a beekeeper in BC (as discussed further below). No corroborating evidence was provided by Mr. Landucci or the other Respondents that Mr. Landucci was in fact engaged in beekeeping, other than an invoice purported to be for making frames for bee hives.

[8] Mr. Landucci stated that he was a businessperson who was creating, manufacturing and selling a number of different products. At the hearing, he presented pictures of various products, some bee-related and others not, that he indicated he had developed and claimed that for some of which he was pursuing patent applications outside of Canada. No documentary evidence to verify such applications was provided, except that some documents he provided at the hearing contained images of products with text next to these images indicating that patents were pending.²

3. Ms. Chickalo

[9] Ms. Chickalo is a resident of Ontario who had, prior to her involvement with NBW, operated a business that made and sold beeswax candles. Ms. Chickalo had an employment agreement with NBW, which at one point named her as NBW's President and was later modified to designate her as a director. Although the employment agreement specified other duties, her primary activity involving NBW was selling shares of NBW to persons she described as either customers from her prior candle business and/or her friends.

[10] Ms. Chickalo had frequent telephone calls with Mr. Landucci regarding NBW. At the hearing in her testimony she admitted that she never met him in person.³

[11] Ms. Chickalo has never been registered with the Commission.

² See for example, Exhibit 27, Natural Bee Works Product Line - Dozens of Collections

³ Transcript, Merits Hearing, Natural Bee Works (Re), April 24, 2019 at 77 lines 9-11.

III. PRELIMINARY MATTERS

A. Temporary Cease Trade Order

- [12] Before addressing the issues that arise in this proceeding, I will refer to an earlier proceeding, in which the Commission issued a temporary order against the Respondents and another individual (the **Temporary Order**), pursuant to ss. 127(1) and 127(5) of the Act. The initial Temporary Order of February 8, 2018 stated that it appeared to the Commission that, among other things:
- a. Ms. Chickalo (and one other person) may have engaged in, or held themselves out as engaging in the business of advising without the necessary registration or an applicable exemption from the registration requirement, contrary to s. 25 of the Act;
 - b. NBW, Ms. Chickalo (and one other person) may have engaged in trading of securities which constituted a distribution without a prospectus or an applicable exemption from the prospectus requirement, contrary to s. 53 of the Act;
 - c. the Respondents may have represented that the securities of NBW will be listed on an exchange, contrary to s. 38(3) of the Act;
 - d. the Respondents may have engaged or participated in an act, practice or course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on investors, contrary to s. 126.1(1)(b) of the Act;
 - e. the Respondents may have made statements that they knew or reasonably ought to have known were untrue or misleading and that they would reasonably be expected to have a significant effect on the market price or value of the securities of NBW, contrary to s. 126.2 of the Act; and
 - f. the named parties (including the Respondents) may have acted contrary to the public interest.
- [13] The Temporary Order provided that trading in securities of NBW was to cease and that trading in any securities by the named parties was to cease. The Commission extended the Temporary Order against NBW, Mr. Landucci and Ms. Chickalo four times.
- [14] As the order of June 27, 2018 stated that the Temporary Order was extended until the conclusion of the hearing on the merits, at the merits hearing on April 26, 2019 I heard submissions from the parties about whether the Temporary Order should be further extended. I issued an order on April 26, 2019 extending the Temporary Order against the Respondents until the later of:
- a. the date the Merits Decision is issued, or
 - b. if the Merits Decision determines that any of Tawlia Chickalo, Rinaldo Landucci and/or Natural Bee Works Apiaries Inc. has violated Ontario Securities Law, the date of the issuance of the Sanctions Decision in respect of that respondent in relation to the Statement of Allegations naming Natural Bee Works Apiaries Inc., Tawlia Chickalo and Rinaldo Landucci dated June 25, 2018.

[15] In my view, it was necessary to extend the Temporary Order to protect against a resumption of the Respondents' capital raising activities and protect current and prospective investors. There was a compelling need to protect the investors since, at various times, Mr. Landucci claimed to be in the process of selling NBW or its assets or to having concluded such a sale, discussed resuming NBW's activities outside of Canada, and he raised questions during the proceedings about contacting the existing investors about buying back their NBW shares. The nature of Mr. Landucci's conduct raised grave concerns that any dealings with NBW investors would further put their interests at risk.⁴ The evidence presented by Staff demonstrated that the Respondents conducted their activities that are the subject of this proceeding in a manner that put investors and their funds at risk in contravention of Ontario securities law as detailed in these reasons. On the basis of these factors, I concluded that the continued application of the Temporary Order was necessary to protect the public and the existing NBW investors from additional harmful activities.

[16] As set out in my April 26, 2019 order and as a result of this decision in which I have determined that each of the Respondents has violated Ontario securities law, the Temporary Order remains in effect until the issuance of the future Sanctions Decision.

B. Representation Status of the Respondents

[17] The Respondents were self-represented throughout the proceeding. At the attendances in advance of the merits hearing I asked Mr. Landucci, on his own behalf and on behalf of NBW, and Ms. Chickalo if they had retained counsel. I explained the seriousness of these proceedings and urged them to consider retaining counsel. Mr. Landucci indicated that he had access to legal representation, but that he was not going to have a lawyer appear on his or NBW's behalf in these proceedings. Ms. Chickalo indicated that she wished to proceed without counsel.

[18] Again, at the commencement of the merits hearing, I asked Mr. Landucci and Ms. Chickalo to confirm their representation status and they both confirmed they were self-represented for the merits hearing. Mr. Landucci stated that:

I don't think I need counsel for this and, again, whatever your -- whatever the charges are going to be, I am going to appeal it anyways. So, that's when we're going to use the attorneys.⁵

[19] At various points Mr. Landucci indicated that he had recently sold NBW to a buyer in the United States, although he provided no evidence to that effect. Mr. Landucci insisted that he continued to be able to speak for and represent NBW. This is consistent with NBW's corporate filing in BC, which identifies Mr. Landucci as NBW's sole director. I concluded that Mr. Landucci represents the company.

[20] Since each of the Respondents was unrepresented by counsel, I provided explanations of what was involved in each phase of the merits hearing and gave them opportunities to ask questions. Where I concluded that they may have

⁴ At a preliminary attendance, I made it clear that if Mr. Landucci wished to advance a proposal to repay the investors involving a share transaction or sale of the business, it was open to him to make an application to vary the Temporary Order for this purpose. No such application was ever made.

⁵ Transcript, Merits Hearing, Natural Bee Works (Re), April 22, 2019 at 14 lines 20-23.

misunderstood what was transpiring or the consequences of an approach they were taking, I endeavoured to give them the opportunity to have additional time or to re-open phases of the hearing that had concluded. This occurred, as an example with Ms. Chickalo, where, after Staff raised questions concerning her understanding of the status of her 'will say' statement, I permitted Ms. Chickalo to have an opportunity to enter her 'will say' statement as sworn evidence since she confirmed that she had been under the impression that this document was being considered as evidence. In Mr. Landucci's case, I gave him additional opportunities to search for and submit documents regarding his registration as a beekeeper, documents showing business activities for NBW and documents regarding his health condition at the time of his interview held at the offices of the British Columbia Securities Commission (**BCSC**), none of which had been submitted in a hearing brief, (as was required by my order of April 3, 2019) or initially entered in evidence during his case. He was also provided with an opportunity to change his mind about cross-examining Ms. Chickalo, and I permitted him to cross-examine her the day after Staff finished their cross-examination of Ms. Chickalo.

- [21] During the Respondents' evidence, I intervened to help them distinguish between evidence and submissions and gave them guidance regarding the appropriate scope of direct, cross and re-examination. I also gave them guidance regarding the rule in *Brown v Dunn*⁶ to let them know that if the Respondents intended to rely on evidence that contradicted a witness then, in fairness, that evidence would have to be put to the witness during cross-examination to allow that witness the opportunity to explain the contradiction.⁷
- [22] Staff did not object to the approach I took to aid these unrepresented Respondents.

C. Disclosure

- [23] Ms. Chickalo provided her residence address and received disclosure from Staff.
- [24] As noted above, Mr. Landucci did not comply with an order to provide an address at which he was willing to receive disclosure. The disclosure materials were too voluminous to rely on email for this purpose. Additionally, sensitive information regarding both investors and the Respondents were included in those materials, making it inappropriate to merely deliver it to a place that Mr. Landucci did not acknowledge as a location at which service could be effected. Mr. Landucci never provided the address of any location at which he would accept delivery.
- [25] Mr. Landucci indicated at the first attendance that he was moving and was therefore unable to provide an address. Mr. Landucci undertook to provide his new address to Staff once he moved. By order dated July 19, 2018, I set a deadline of July 26, 2018 for Mr. Landucci to provide his address so that Staff could serve the disclosure on him by August 9, 2018. Mr. Landucci never provided his address by the deadline. As a result, Staff requested an attendance to deal with Mr. Landucci's non-compliance with the July 19, 2018 order.

⁶ 1893 CanLII 65

⁷ Transcript, Merits Hearing, Natural Bee Works (Re), April 23, 2019, at 53 line 25 to 54 line 5.

- [26] An attendance was held on August 22, 2018. None of the Respondents participated even though they were provided with notice of the attendance and the telephone conference information to participate. I was informed that Staff's investigator, Ms. Lavalley, had reached out to Mr. Landucci twice to request an address and Staff received no response. I discussed with Staff options to ensure that Mr. Landucci had access to the disclosure. As Mr. Landucci is located in BC, Staff made arrangements with the BCSC to make the disclosure available at the BCSC's offices for pick up. I was satisfied that this approach reasonably ensured that the materials were being dealt with in a responsible manner and would be accessible to Mr. Landucci.
- [27] At the next attendance on November 16, 2018, Staff confirmed that disclosure was available for Mr. Landucci to pick up at the BCSC's offices and that Staff tried to reach out to a law firm associated with NBW, but they did not respond to Staff. At this attendance, Mr. Landucci stated multiple times that he would email his address to Staff, but never did so.
- [28] At the attendance on January 15, 2019, Staff confirmed again that disclosure was available for pick-up at the BCSC's offices, but that Mr. Landucci had not yet picked it up. Mr. Landucci was once again asked to provide an address so that Staff could provide him with disclosure and Mr. Landucci indicated that he does have an address but did not want to give it to Staff.
- [29] Again, at the attendance on April 3, 2019, Mr. Landucci agreed to email Staff his address and an address and email for his counsel; however, he never followed through with this promised information.
- [30] In my view, Staff took all reasonable steps to attempt to serve Mr. Landucci with the disclosure in this proceeding. Mr. Landucci was ordered to provide his address to Staff for the purpose of effecting delivery of disclosure. Mr. Landucci never complied with this order. He made promises to provide Staff with his address and never followed through. Arrangements were made with the BCSC so that the disclosure package could be picked by Mr. Landucci. He was previously interviewed at this location and it was always open to him to pick up these materials. He never picked up the disclosure materials from the BCSC.

D. Method of Participation of the Respondents

1. Prior to the Merits Hearing

- [31] Since Ms. Chickalo and Mr. Landucci did not reside in Toronto, all preliminary attendances were conducted by telephone conference. Although scheduled with appropriate notice to the Respondents, Mr. Landucci did not participate in two preliminary attendances. Ms. Chickalo missed one preliminary attendance.

2. During the Merits Hearing

- [32] Arrangements were made by Staff in advance of the merits hearing for the evidence portion of the hearing to be conducted by video-conference. Ms. Chickalo had indicated a willingness to participate in person from either Toronto or Vancouver at the BCSC's office, and Mr. Landucci indicated he would participate from the offices of the BCSC. Ultimately, Ms. Chickalo could not make arrangements to travel and stay in Toronto for the hearing. She informed the Commission of this at a late stage and an attendance was held on Thursday, April 18, 2019 by telephone conference, the last business day before the

commencement of the merits hearing to discuss arrangements for her participation. Arrangements were made and tested for Ms. Chickalo to participate through GoToMeeting software on a personal computer available to her. Mr. Landucci did not participate in the attendance on April 18, 2019. I note that on the first day of the merits hearing on April 22, 2019, Mr. Landucci also asked that he too be able to participate on this basis, which I permitted. It was also agreed that opening statements would be made on the first day of the merits hearing solely by telephone conference, followed by video-conference for the remainder of the hearing.

- [33] On the first day of the merits hearing, after hearing Staff's opening statement, Mr. Landucci and Ms. Chickalo elected to wait until after Staff concluded its case to make their opening statements. The rest of the hearing proceeded by way of video conference as planned.
- [34] Staff and the Panel were present in a hearing room in Toronto throughout and this hearing was continuously open to the public, with the exception that the hearing was held *in camera* for a portion of the hearing on April 26, 2019 that dealt with evidence related to Mr. Landucci's condition at the time of his interview at the offices of the BCSC. There were occasional breakdowns in the video connection and in visibility of Mr. Landucci, but these became less frequent as the hearing progressed, and video-conferencing provided a practical, reasonably effective solution to facilitate the conduct of the hearing. All documents referred to in evidence were able to be clearly viewed through this video connection. All participants including the Panel, Staff, witnesses, Mr. Landucci and Ms. Chickalo were also able to view each other on the video conferencing screen as well.

E. Instructions about Evidentiary Issues

- [35] Once Staff's opening statement was concluded and Staff was ready to introduce their evidence, I provided some directions to the Respondents about cross-examining Staff's witnesses.
- [36] Ms. Chickalo and Mr. Landucci had difficulty formulating questions and had a tendency to provide statements or comment on the witness' answers. I intervened when appropriate to assist the Respondents in formulating questions. When a respondent crossed the line making statements rather than posing questions I reminded them that they could make these statements when it was their turn to testify and that they had to limit themselves to questions and to try to address one fact or issue at a time. Where appropriate, I ensured that when the questions asked by Mr. Landucci and Ms. Chickalo related to a document, Staff would bring the document up on the video display so everyone could see what was being discussed.
- [37] Instructions were also provided to the Respondents about making a decision to testify or not. They were instructed that if they did not testify, then Staff will rely on the transcript of their compelled interviews and if they did testify then they would be subject to cross-examination by Staff (and the co-respondents) and Staff may use the transcript of their compelled interview to impeach their credibility and bring to their attention prior inconsistent statements.
- [38] Staff consented to waiting until the Respondents heard all of Staff's case before having the Respondents decide whether or not to testify.

- [39] Ms. Chickalo and Mr. Landucci (on his behalf and on behalf of NBW) decided to testify.
- [40] Instructions were also provided to the Respondents about the difference between opening statements and direct examination – admittedly a possible source of confusion since their presentations would move from one to the other based on their decisions to provide their opening statements after Staff’s case closed and then immediately to testify. I provided a reminder that if opening statements contained matters that may constitute evidence, they should consider repeating that information under oath.
- [41] Even though the Respondents failed to comply with the April 3, 2019 order to provide a hearing brief of their documents by April 15, 2019, the Respondents were instructed to seek to present documents to support their evidence given in their testimony and I provided new deadlines to allow them to present any documents during the hearing. To alleviate any prejudice to Staff, Staff would be given the opportunity to review each document and challenge it if necessary since it would be the first time they are seeing it at a late stage in the proceeding.
- [42] The documents entered into evidence from Mr. Landucci consisted of images of various products he indicated were either being offered by NBW or were under development, and in respect of some, overseas patent applications were, he said, being pursued. He also sought to introduce documents showing his condition at the time of his interview at the BCSC. As discussed further below, since these latter documents related to a time subsequent to the day of his interview, they were not considered relevant and not entered into evidence.
- [43] Ms. Chickalo entered into evidence a document stated by her to be a spreadsheet of values forming an agreement related to the transfer of goods and services from her to NBW in exchange for funds that came to NBW from her capital raising activities.
- [44] Instructions were also provided to the Respondents about their ability to cross-examine the other respondent. Specifically, respondents can be cross-examined by co-respondents; but the questions must be on matters where the co-respondents are adverse in interest. I explained to the Respondents that they could not ask questions or make statements to bolster a common position or set of facts. I instructed that a co-respondent’s cross-examination would proceed first, followed by Staff’s cross-examination, based on a view that the respondents were starting out from a vantage of common interest and that all that evidence should be presented prior to Staff’s cross-examination.
- [45] Mr. Landucci initially decided not to cross-examine Ms. Chickalo and then changed his mind after hearing Staff’s cross-examination. I asked Staff for case law regarding a respondent’s desire to revisit a decision not to cross-examine a co-respondent.
- [46] Staff provided me with case law from the Alberta Court of Appeal⁸ dealing with a self-represented respondent who elected not to cross-examine and then later hired counsel. A request was made for the counsel to cross-examine the previous witnesses and the Court permitted cross-examination to take place.

⁸ *R v Levin*, 2000 ABCA 142 (CanLII)

Considering this case, Staff did not object to Mr. Landucci changing his mind to cross-examine Ms. Chickalo, which I permitted. I asked how much preparation time Mr. Landucci would require to prepare for cross-examination and with his consent adjourned to give Mr. Landucci time to prepare his cross-examination questions for Ms. Chickalo.

- [47] In addition, Ms. Chickalo had elected not to cross-examine witness CF. However, after hearing Mr. Landucci's cross examination of CF she changed her mind. I permitted this cross-examination.
- [48] Instructions were also provided to the Respondents about the scope of re-examination, which in this case, would take the form of the testifying respondent being able to make under oath any clarifications that they wished to make.
- [49] The evidence was entered in a manner consistent with the foregoing instructions.

IV. ISSUES

- [50] Staff's allegations present the following issues:
- a. Did the Respondents commit fraud?
 - b. Did Ms. Chickalo engage in the business of trading in securities without being registered?
 - c. Did NBW and Ms. Chickalo engage in an illegal distribution?
 - d. Did the Respondents make misleading or untrue statements in marketing materials that they knew or reasonably ought to have known would reasonably be expected to have a significant effect in the market price or value of the securities of NBW?
 - e. Did the Respondents make prohibited representations that the securities of NBW would be listed on an exchange?
 - f. Did Mr. Landucci authorize, permit or acquiesce in the non-compliance with the Act by NBW?

V. EVIDENCE

A. Evidence Presented

- [51] Staff submitted documentary evidence and called three witnesses:
- a. Laura Lavalley (**Ms. Lavalley** or **Staff's investigator**), an investigator in the Commission's Enforcement Branch, who testified in person;
 - b. CK, an investor in NBW, who testified by video conference; and
 - c. CF, an investor in NBW, who testified in person.
- [52] Most of the investigator's testimony was provided by affidavit. This way of introducing the investigator's evidence was agreed to early on during preliminary attendances and the affidavit was made available to the Respondents in November 2018 to give them time to review the investigator's evidence in order to prepare for the merits hearing.

- [53] Ms. Chickalo testified on her own behalf and provided Staff with a 'will say' statement containing a summary of her anticipated evidence in compliance with the Commission's November 16, 2018 order. She did not call any other witnesses.
- [54] Mr. Landucci never provided a witness summary for his own evidence despite being ordered to do so at the November 16, 2018 attendance. Ultimately, Staff consented to Mr. Landucci testifying without having provided a witness summary. Mr. Landucci testified on his own behalf and on behalf of NBW. He did not call any other witnesses.
- [55] None of the Respondents submitted hearing briefs with documentary evidence upon which they intended to rely. As discussed above, allowances were made for the Respondents to provide documentary evidence during the hearing.
- [56] A number of issues and objections came up while they testified. The following paragraphs set out how all these issues were dealt with at the hearing.
- [57] Mr. Landucci:
- a. Mr. Landucci referred to a number of documents that he did not provide to Staff in advance of the hearing. In some cases, I gave Mr. Landucci time to either locate the document or materials that would help authenticate documents he referred to. Mr. Landucci demonstrated a tendency to promise and not deliver such documents, even when given opportunities to do so as the hearing progressed. Specifically:
 - i. He provided a photo of a document purporting to be the final spreadsheet forming the agreement for the transfer of property to Ms. Chickalo in return for a monetary payment, which was a version of the spreadsheet Ms. Chickalo had already put into evidence. Staff objected to this document based upon the risk that it was created after the fact based on the subject matter coming up in her cross-examination related to the document she had placed into evidence. Since no authenticating information was provided by Mr. Landucci after an opportunity to do so, this document was not admitted into evidence.
 - ii. Mr. Landucci undertook to provide evidence of his BC beekeeper registration, which was never forthcoming. During the hearing, I provided Mr. Landucci with time extensions to find and present any documentation about his beekeeping registration. Mr. Landucci never provided such documentation, instead indicating that his files were too voluminous to locate this document in the time afforded. Correspondence from the Provincial Apiculturist in British Columbia presented by Staff, to the contrary, indicated that a review of the registration system was conducted showing that Mr. Landucci was not registered as a licensed beekeeper in BC.
 - iii. He said he would produce medical information regarding his condition at the time of his compelled interview at the BCSC

that, he indicated, would support the view that his evidence at the hearing should be preferred to his evidence during the interview. I allowed him to re-open his examination in chief to be allowed to seek to have these documents admitted solely for the purpose of potentially explaining inconsistencies in what he said during his interview and at the hearing. Ultimately, he offered certain documents pertaining to his care well after his interview, which I determined were inadmissible since they did not provide information concerning his condition at the time of his interview.

- iv. He indicated that he would provide evidence that NBW was sold, but never provided it. During the hearing I asked Mr. Landucci if he could provide any documentation about the sale of the company and he informed me that he did not have that documentation on hand. He later clarified that the company had been sold, but the transaction had not yet closed, and had suggested that the Temporary Order may have affected the closing of the transaction, again with no other evidence to that effect. Furthermore, at a later time he also indicated that the company was in the final stages of being sold and negotiations were being finalized.
 - v. Mr. Landucci was fixated on disproving a fact that was never alleged in the Statement of Allegations, namely, that NBW had not made any sales. Since this was not alleged in the Statement of Allegations, several documents demonstrating sales activity were determined not to be admissible.
 - vi. Mr. Landucci was provided with numerous extensions to provide documents throughout the hearing despite the Panel having explained the requirement that they be provided in advance and having ordered on April 3, 2019 that the Respondents' hearing briefs were due on April 15, 2019. At the attendance on April 3, 2019, Mr. Landucci expressed to the Panel that he would be filing a hearing brief.⁹ Mr. Landucci never filed a hearing brief. During the merits hearing he then complained about having insufficient time to locate documents. He also complained when the late documents that he did present were not entered as evidence because they fell outside of the allowances I made for the late submission of specific categories of documents or were irrelevant to the issues under consideration.
- b. As discussed above, I explained the rule in *Brown v Dunn* to the Respondents, emphasizing the unfairness that arises if a party makes statements seeking to discredit a prior witness if the matter was not raised on cross-examination allowing that witness the opportunity to provide an explanation. On the basis of *Brown v*

⁹ Transcript, Attendance, Natural Bee Works (Re), April 3, 2019 at 24 line 21 to 25 line 1; and 27 lines 21 to 28.

Dunn, I disregarded Mr. Landucci's evidence about Staff's investigator, Ms. Lavalley, reportedly saying she did not want marketing materials sent to her and statements about other individuals who were interviewed at the BCSC since these matters were not put to Ms. Lavalley during her cross-examination.

[58] Ms. Chickalo:

- a. When it was time for Ms. Chickalo to cross-examine Staff's investigator, Ms. Chickalo stated that her 'will say' statement provided all her queries to Staff's investigator and I advised Ms. Chickalo that she needed to ask the questions directly to Ms. Lavalley during cross-examination. Later on, it was apparent that there was confusion about the status of Ms. Chickalo's 'will-say' statement. I permitted Ms. Chickalo's 'will-say' statement to be sworn and marked as an exhibit. I allowed this because Staff did not object, there was no new information in the 'will-say' that had not been already raised at the merits hearing and Ms. Chickalo had the mistaken belief that I had seen the document previously and that it was marked as an exhibit. This document essentially provided both evidence and submissions summarizing her case.
- b. On the basis of *Brown v Dunn*, I disregarded Ms. Chickalo's direct evidence about investor CK's state of mind since CK was never questioned about this on cross-examination.

B. Anonymization

[59] In order to protect the privacy of the investor witnesses, their names and personal information have been anonymized and I required that Staff provide a redacted version of the record in accordance with the Commission's *Practice Guideline*.

C. Burden of Proof

[60] The standard of proof in proceedings before the Commission is the civil standard of proof on a balance of probabilities. The question I must consider is whether, based on evidence before us that is sufficiently clear, convincing and cogent, it is more likely than not that the elements of the various allegations have been made out. At the hearing, I emphasized that this was the standard of proof being applied¹⁰ as Mr. Landucci was under the impression that the allegations had to be proven beyond a reasonable doubt.

D. Credibility

[61] The testimony of Mr. Landucci and Ms. Chickalo's conflicted in material respects with Staff's evidence. I must therefore consider the extent to which their credibility will affect the weight I attach to their testimony.

¹⁰ Transcript, Merits Hearing, Natural Bee Works (Re), May 23, 2019 at 58 lines 10-18.

1. Mr. Landucci's Credibility

[62] At points during the hearing, Mr. Landucci displayed anger leading him to essentially boycott important aspects of these proceedings. There were many extensions of time to produce documents or information afforded to Mr. Landucci, which he virtually never availed himself of. As mentioned above, he did not provide his address to receive Staff's disclosure and never picked up all the disclosure materials left for him at the BCSC, which he could have obtained without difficulty. He stated that he took this approach because of his unhappiness with the way Staff conducted its investigation, including purportedly pressing for his attendance at his interview at the BCSC when he stated that he was ill. He also repeatedly complained about alleged statements of Staff that NBW was a "fraudulent company" because it had "no sales", even though "no sales" was not alleged in the Statement of Allegations.

[63] It is very difficult to assess whether Mr. Landucci's actions were based on deceptiveness or rather his inability to rise above his apparent anger over his complaints regarding alleged aspects of Staff's investigation in this proceeding, including the investigation interview that took place. In this regard, I listened to his concerns during his testimony and submissions, during which he stated his intention to reveal this information to the public in detail, including a tape recording he stated he made of a conversation with a Staff member before attending the interview at the BCSC, but again he never supplied the tape recording, or any documentation, and his complaints came across as unsupported outbursts. These outbursts included statements alleging that:

- a. Staff were violating human rights and endangering multiple people in an act of terror by requiring him to attend the investigation interview at the BCSC when he was ill and contagious.¹¹
- b. He would reveal information in his possession from phone recordings that would bring down the TSX and negatively impact the tourism industry.¹²
- c. He wondered whether Staff was secretly shorting the TSX market pending the release of his revelations.¹³
- d. Staff engaged in criminal behaviour and that he was going to "charge" Staff because they conducted the investigation interview when he was allegedly sick,¹⁴ that his lawyers had advised him not to speak to Staff because of their criminal offences, notwithstanding orders of this Panel for him to provide a hearing brief and other documents.
- e. He often referred to these proceedings as a "joke"¹⁵ and would say he was done, only then to further participate and seek to produce documents at later stages of the hearing.

¹¹ Transcript, Merits Hearing, Natural Bee Works (Re), April 25, 2019 at 136 lines 7-12 and Transcript, Merits Hearing, Natural Bee Works (Re), April 25, 2019 at 143 lines 8-12.

¹² Transcript, Merits Hearing, Natural Bee Works (Re), April 25, 2019 at 141 line 22 to page 142 line 3.

¹³ Transcript, Merits Hearing, Natural Bee Works (Re), April 25, 2019 at 143 lines 15 to 22.

¹⁴ Transcript, Merits Hearing, Natural Bee Works (Re), April 25, 2019 at 122 lines 1-3 and 143 lines 15-22.

¹⁵ Transcript, Merits Hearing, Natural Bee Works (Re), April 23, 2019 at 112, line 15;

Transcript, Merits Hearing, Natural Bee Works (Re), April 26, 2019 at 145 lines 16-17 and 149

- f. He said that the proceedings did not matter anyway since he would be appealing. He also indicated that this is why he was unrepresented at this stage of the proceedings.¹⁶

- [64] In addition, Mr. Landucci stated that his lawyers were supposed to take care of securities law compliance and registration¹⁷, but not one iota of evidence on this was forthcoming, other than evidence about incorporation and the handling of some share certificates. He said that all relevant documents were delivered to the BCSC offices, later stating that many documents were not left there for fear of confidentiality concerns.
- [65] I cannot determine whether Mr. Landucci believed the foregoing statements or was being deceptive by making promises that would give the impression that he might have probative documents, which he did not intend to produce. I also note that the pattern of promising and undertaking to produce documents and then not delivering was a pattern that existed during both the hearing and pre-hearing stages. I was also provided with evidence from Staff that Mr. Landucci did not comply with the undertakings given at the BCSC interview to provide documents and other requests from the BCSC and this Commission.¹⁸
- [66] It may also be that Mr. Landucci's outrage, lack of compliance with the Panel's orders and his failure to provide documents was directed at Ms. Chickalo in order to maintain her belief in him as a victim of these proceedings despite the evidence advanced by Staff. This was particularly concerning when late in the proceedings Ms. Chickalo referred for the first time to a non-disclosure agreement she allegedly had with Mr. Landucci, NBW or both, that prevented her from saying more about the alleged misrepresentations that could have helped clarify issues regarding her state of knowledge regarding the misrepresentations alleged by Staff.¹⁹ This document was never described in detail and was not offered in evidence. Nonetheless, it was used by her as a reason for not providing information about the alleged misrepresentations or to explain her state of mind when communicating them to prospective investors.
- [67] It appeared to me that the Respondents had the ability and opportunity to effectively participate in the merits hearing, but often chose not to do so. While they presented limited documentary evidence they were given ample time extensions and leeway to provide documentation at the hearing even though they failed to comply the Commission's earlier procedural orders.
- [68] Any differences in evidence given by Mr. Landucci at the merits hearing compared to his investigation interview on May 8, 2018 are not material to my findings. Ultimately, as explained in respect of each of the alleged violations below, I rely on the ample uncontroverted documentary evidence provided by Staff and the evidence provided by the investor witnesses.

lines 7-8 and 10; and

Transcript, Merits Hearing, Natural Bee Works (Re), May 23, 2019 at 57 lines 1-3.

¹⁶ Transcript, Merits Hearing, Natural Bee Works (Re), April 22, 2019 at 14 lines 20-23.

¹⁷ Transcript, Merits Hearing, Natural Bee Works (Re), April 25, 2019 at 125 line 10 to 126 line 2.

¹⁸ Exhibit 2, Undertakings from Rinaldo Landucci Interview May 10, 2018 at 356, Demand for Production of Records from the BCSC dated October 2, 2017 at 2895-2898, Request for documents from the Commission dated February 27, 2019 at 513-514; and Transcript, Merits Hearing, Natural Bee Works (Re), April 26, 2019 at 33 line 12 to 41 line 27.

¹⁹ Transcript, Merits Hearing, Natural Bee Works (Re), May 23, 2019 at 78 lines 6-14.

- [69] Staff's evidence demonstrated that the statements made by Mr. Landucci to Ms. Chickalo and incorporated in the Marketing Materials were false and his assertions that these had some element of truth, but were for internal use and not for use in communicating with prospective investors, were not credible, and for that purpose, I find Mr. Landucci's evidence in this area was not credible.
- [70] Staff asked me to consider Mr. Landucci's prior criminal record when assessing his credibility. However, based on the foregoing, I do not need to consider the issue of whether events from many years before, impugns his credibility.

2. Ms. Chickalo's Credibility

- [71] Ms. Chickalo participated in the proceedings in a more orderly way than Mr. Landucci. She was very deferential to Mr. Landucci and would often not directly respond to questions put to her by Staff, saying that they should instead be put to him. When finally answering questions directly, they were frequently admissions that tended to support the allegations about her responsibility for making the alleged misrepresentations in the Marketing Materials and repeating them to investors orally, but then asking that her misunderstanding concerning the use of the information she was provided by Mr. Landucci and her inexperience be considered as an excuse.
- [72] When I asked Ms. Chickalo questions in order to better understand her actions and her state of mind and what she understood at the time, Ms. Chickalo submitted that:

So, whether if your questioning my mind, state of mind as to my continued declaration of why I did this, you might have to get a psychologist if you want to question that but, otherwise, I stand by what I said.²⁰

- [73] In respect of Ms. Chickalo, I rely on the ample uncontroverted documentary evidence provided by Staff and the evidence provided by the investor witnesses. I also rely on her admissions that she made during her testimony that she sold NBW shares to investors and passed on the Marketing Materials to investors.
- [74] As discussed below regarding Ms. Chickalo's participation in making fraudulent misrepresentations to prospective investors, I concluded that she ought reasonably to have known that the statements were false. My assessment of her evidence and credibility did not lead me to find that she had actual subjective knowledge that the statements were false. Instead, she was wilfully blind to their truth or falsehood and reasonably ought to have known they were false.

E. Overview of Investment Scheme

1. Securities Sales to Investors

- [75] During the Material Time, between April 2017 and January 2018, Ms. Chickalo sold shares of NBW to her network of friends and former customers and deposited investor funds into accounts controlled by herself and Mr. Landucci. In total, Ms. Chickalo and another individual, who is not a party to these proceedings, distributed 1,180,000 NBW shares worth \$291,250 to 69 investors. Staff were able to match \$267,203.00 of funds in the Respondents' bank

²⁰ Transcript, Merits Hearing, Natural Bee Works (Re), May 23, 2019 at 77 lines 22-25.

accounts to investor payments. Ms. Chickalo transferred the majority of these funds to accounts controlled by Mr. Landucci (discussed further below).

- [76] Ms. Chickalo also prepared marketing materials (the **Announcement** and the **PowerPoint Presentation**) (together, the **Marketing Materials**) based on information provided by Mr. Landucci, communicated with potential investors, performed administrative tasks relating to the signing of share purchase agreements, provided investors with instructions on how to make payments for shares, and accepted payments from investors into her personal bank account.

2. **Statements in Marketing Materials**

- [77] The Marketing Materials contained the following statements about NBW's assets, sources of funding and plans to list on a stock exchange. Specifically, the Marketing Materials stated:

- a. NBW "will be launching on Nasdaq";
- b. NBW's "lowest launch value" on the stock exchange is \$4.00, "which creates a minimum 1600% ROI!";
- c. NBW has raised more than \$20 million from more than 200 investors and, accordingly, has already "surpassed" Nasdaq's monetary requirement of \$5 million "to go public";
- d. NBW has secured a \$200 million line of credit "to start working with now!";
- e. NBW has "major corporate customers waiting for product"; and
- f. NBW has property worth \$2.8 million, and as of July 2017 has \$1,900,000 worth of apiaries equipment and bees.

- [78] No documentation was presented by the Respondents that would substantiate any of these corporate plans. There was no registration statement or prospectus in even the most scant form or outline for such documents offered into evidence. There were no valuation materials to support NASDAQ pricing information or its future projected price. No correspondence with lawyers, accountants, underwriters or financial advisers to show any activity leading to a listing. Similarly, there were no draft credit agreements, let alone a finalized one, or even correspondence hinting at discussions concerning a line of credit or security to support a line of credit. There was no evidence of major corporate customers, nor any support for the stated assets, or even the existence of hives. A review of bank accounts, and a payment account used for night markets showed assets largely attributable to NBW investor monies and small-scale individual night market sales.

- [79] It is normally difficult to demonstrate that a negative is true, namely that on the balance of probabilities, a series of statements are untrue. However, in this case, a review of the bank accounts for the Respondents provided in Ms. Lavalley's evidence, the payment account used for night market sales, the assorted images of purported inventions by Mr. Landucci, and Mr. Landucci's unsupported statements that his products and candle ideas have multi-million values consistent with NBW's claimed corporate activities are sufficiently baseless that I can draw an inference that these statements are false. It was clear that Mr. Landucci's numbers were made up numbers. For example, his

idea that you could project future sales by assuming that if only 1% of the worldwide population purchased his products (such products included religious candles, inventions related to the prevalence of diabetes and personal security needs, among others), his sales projections for the next two years of \$96,007,500²¹ would be comfortably met is absurd. It is obvious how flimsy these ideas are considering only the many available substitute products, costs of production and costs of marketing to these populations and the costs and skill necessary to build a business with the assumed scale. It appeared that the NASDAQ price projections were, at most, similarly just arithmetical averages based on the price history of some unidentified subset of successful NASDAQ launches over some unspecified time period, without even the slightest effort to disclose assumptions or describe what could go wrong. Such claims go the heart of the expertise of the Commission as a specialized securities tribunal and in applying that expertise, I have determined that his claims were baseless.

- [80] These were all clearly misrepresentations designed to induce the recipients of the Marketing Materials to invest. No evidence was submitted by the Respondents that any of these statements had a scintilla of truth.
- [81] These statements were not portrayed as theoretical examples, but rather as a description of an advance pre-listing company rather than the reality, which was that NBW was, at most, a small scale craft business. Specifically, the evidence demonstrated that:
- a. NBW did not list on a stock exchange and had never taken any meaningful steps to do so;
 - b. Despite Ms. Chickalo's explanation that she used the launch value of \$4.00 as an "example", this amount was portrayed as firm and created an impression to investors such as CK that there was a guaranteed increase in share value to be expected;
 - c. NBW raised \$291,250 from 69 investors and not \$20 million from over 200 investors;
 - d. NBW never secured a line of credit from any bank or other institution;
 - e. NBW did not have signed contracts with any major corporate customers. Indeed, Mr. Landucci acknowledged that there were no final agreements with corporate customers; and
 - f. NBW's bank accounts do not show activity consistent with purchasing \$2.8 million worth of property or \$1.9 million of apiaries, equipment and bees.

3. **CK's Investment**

- [82] CK was one of two investor witnesses who testified at the hearing. CK lives in Ontario. She worked as a counsellor before she stopped working 16 years ago due to her medical conditions. She is not an accredited investor.
- [83] CK formed a close relationship with Ms. Chickalo which culminated in Ms. Chickalo moving into her home. CK testified that Ms. Chickalo gave her "warmth

²¹ Transcript, Merits Hearing, Natural Bee Works (Re), May 23, 2019 at 46 lines 8-17.

and care" and that she became dependent on Ms. Chickalo. Ms. Chickalo disputed that CK was "dependent" on her, but she testified that she cooked meals for CK, that CK became strong while Ms. Chickalo was living with her and cooking for her, and that one of the reasons she moved in with CK was because CK "was not actually physically capable of doing the volume of work that was required".²²

- [84] Within a few months of meeting Ms. Chickalo, CK invested a total of \$115,000 in NBW in her own name and on behalf of her two sons. She invested three different times, first investing \$10,000, then investing \$2,500 on behalf of each of her sons (Staff were able to identify payment information for only one of these \$2,500 investments, but share certificates were issued in respect of both), and finally investing \$100,000. She testified that Ms. Chickalo showed her the PowerPoint Presentation. She testified that Ms. Chickalo told her that she could buy shares at \$0.25, and they would sell on the NASDAQ for \$4.00. In cross-examination, CK denied that Ms. Chickalo had told her that this was merely a potential value.
- [85] CK testified that one of the reasons she wanted to invest in NBW was to make enough money to buy her son an expensive dog to help him with a medical condition and she understood this would be a safe investment.
- [86] CK testified that employees of her bank cautioned her twice not to make the \$100,000 investment because there was no prospectus and other reasons for concern. Ms. Chickalo accompanied her during one of these bank meetings. CK explained that:

The discussions [with the bank employees] were around them trying to get me to change my mind, and for some reason I could not change my mind. I was just so -- I believed Tawlia so much. I was just so -- I was very sick at this time too. I was not right. I was alone. I believed everything and this is what happened.²³

- [87] In February or March of 2018, CK asked Ms. Chickalo to return the money she had invested. She phoned NBW's lawyers who were listed on the share certificate and did not get a response. She asked for her money back from Ms. Chickalo numerous times. She phoned Mr. Landucci twice to ask him to return her money. She testified that on the second occasion he said that he would return her money. She also asked Mr. Landucci for her money back by email. She has never received any money back.
- [88] CK testified that she felt "crushed" and "betrayed". She testified that because she no longer has the money she invested, she cannot pay for medical treatments that she needs.²⁴

4. **CF's Investment**

- [89] CF was the second investor witness who testified at the hearing. CF lives in Ontario and works as a senior auditor. She is not an accredited investor.

²² Transcript, Merits Hearing, Natural Bee Works (Re), April 24, 2019 at 67 lines 20-21.

²³ Transcript, Merits Hearing, Natural Bee Works (Re), April 23, 2019 at 36 lines 20-24.

²⁴ Transcript, Merits Hearing, Natural Bee Works (Re), April 23, 2019 at 50 lines 20-27.

- [90] CF first heard of Ms. Chickalo when she purchased candles from Ms. Chickalo's prior company Pheysonian Bee Works. CF heard about the NBW investment when she received a promotional email from Ms. Chickalo on May 30, 2017. CF testified that the email provided information on the shares the company was issuing. The email stated, "we currently have 232 investors of the 300 we need to register on the NASDAQ." CF testified that after reading this statement, she figured they would get the number of investors they needed to list on the NASDAQ and that by listing on the NASDAQ, she was going to make money. CF testified that after reading the email, she thought NBW was "on the up and up" and she understood Ms. Chickalo to be the owner of the company.
- [91] The PowerPoint Presentation "Welcome to Bee Works" was attached to the email listing the price of \$0.25 in bundles of 500 shares for a total of "\$1,250" and "our lowest launch value is 4.00 which creates a minimum of 1600% ROI." CF testified that after reviewing the presentation, she thought "it was a good investment opportunity" and that she "was going to make a lot of money."²⁵
- [92] Ms. Chickalo emailed CF a Share Purchase Agreement, which she signed on May 31, 2017. CF sent Ms. Chickalo \$1,250 via an Interac e-transfer on the same day. CF testified that she did not hear anything about her investment after making this payment, so she emailed Ms. Chickalo on June 20, 2017 asking for an update. She testified that she wanted share documents to show that she had purchased shares and that she wanted to know "how close they were to that 300 mark of the number of people that they needed."
- [93] CF testified that on August 15, 2017 she received a letter from Metro Law Office LLP, along with a copy of her share certificate. The share certificate listed CF's name as the Registered Holder at the top of the document, but also identified Mr. Landucci as the Registered Holder in the middle of the document. CF testified that after reviewing the share certificate she "lost a lot of confidence" and was confused about why Mr. Landucci's name was on it instead of her own.²⁶
- [94] On March 15, 2018, CF emailed Ms. Chickalo asking for a refund. She testified that she was in a difficult financial situation at the time since she had debts to pay off and was helping her unemployed son. She testified that the company was not listed on the NASDAQ at the time and that she did not see an opportunity to sell her shares. CF testified that she had not heard from Ms. Chickalo about her refund and that she was very upset and angry.
- [95] CF received a questionnaire about her investment in NBW from Staff's investigator, which she filled out on March 18, 2018.
- [96] On March 21, 2018, Ms. Chickalo emailed CF notifying her that the Commission issued a temporary cease trade order against the company but stated "please do not be concerned." In the email, Ms. Chickalo noted that CF may have received a communication from Staff containing a questionnaire, but that responding to the questionnaire is voluntary. CF testified that she read this

²⁵ Transcript, Merits Hearing, Natural Bee Works (Re), April 24, 2019 at 15 line 9.

²⁶ This had occurred with several share certificates, and the evidence showed corrected share certificates being issued.

email to dissuade her from completing the survey and that she "figured there was some kind of illegal action going on."

[97] CF never received a refund of her money. She testified that losing this money had a "large impact" on her and that she felt she had been "ripped off." CF testified that she "will never invest in anything ever again."

5. **Misuse of Investor Funds**

[98] Mr. Landucci and Ms. Chickalo directed the flow of investor funds in various bank accounts held by NBW, Mr. Landucci and Ms. Chickalo. These accounts were controlled by either Mr. Landucci or Ms. Chickalo.

[99] The evidence at the hearing demonstrated that the majority of investor funds were used by Mr. Landucci and Ms. Chickalo for personal expenditures or withdrawn in cash.

[100] Staff's investigator gathered financial records related to the Respondents and provided an analysis of the source and use of funds.²⁷ This evidence demonstrated that:

- a. Ms. Chickalo received \$125,000 of investor funds into her bank account during the Material Time. She transferred \$92,500 to the accounts of Mr. Landucci and NBW as follows:
 - i. \$49,500 was transferred to Mr. Landucci's 1st personal account.
 - ii. \$13,500 was transferred to Mr. Landucci's 2nd personal account.
 - iii. \$29,500 was transferred to the NBW account.
- b. In total, approximately \$49,500 was used by Ms. Chickalo for apparent non-NBW purposes. She retained approximately \$33,000 for personal use which can be broken down approximately as follows: Ms. Chickalo used approximately \$21,000 for household expenses (including mortgage payments, insurance, and miscellaneous bill payments), and used approximately \$10,000 for miscellaneous expenses such as restaurants, entertainment and transportation, as well as unknown payments. She also withdrew approximately \$16,500 in cash which is unaccounted for.
- c. Investors deposited \$117,000 directly into the NBW account controlled by Mr. Landucci and \$25,000 into Mr. Landucci's 2nd personal account.
- d. Overall, Mr. Landucci received approximately \$234,500 of investor funds through the two personal accounts in his own name and through the NBW account (funds were transferred through Ms. Chickalo, or in some cases from investors directly into the NBW account). Mr. Landucci is the sole authorized signing authority on all three accounts.

²⁷ Exhibit 2, Flow of Funds Chart [Overview] and Flow of Fund Chart [Detailed], Tab 10

- e. Mr. Landucci used approximately \$47,000 for household expenses, bill payments, transportation, insurance, travel and motel charges, restaurants and other charges. He withdrew approximately \$180,000 in cash, which is unaccounted for. Staff alleges that he used less than \$20,000 for apparent business expenses. Mr. Landucci denied that he used investor funds for personal purposes but did not provide any evidence other than his own assertions to demonstrate that all the funds were used for legitimate business purposes.

VI. ANALYSIS

A. Subsection 126.1(1)(b): Did the Respondents engage in fraud?

[101] Fraud is prohibited under s. 126.1(1)(b) of the Act, which provides in relevant part that:

A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities ... that the person or company knows or reasonably ought to know,

...

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

[102] The Supreme Court of Canada in *Theroux*²⁸ summarized the elements of fraud as follows:

... the *actus reus* of the offence of fraud will be 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 interest at risk.

Correspondingly, the *mens rea* 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).²⁹

[103] The expression "other fraudulent means" has been interpreted to include using investor funds in an unauthorized manner, using corporate funds for personal

²⁸ *R v Theroux*, [1993] 2 SCR 5 (***Theroux***)

²⁹ *Theroux* at para 24

purposes, exploiting weaknesses of others and unauthorized diversion of funds and appropriation of property.³⁰

- [104] The fraud element in the Act that provides for a state of mind in which the person “reasonably ought to know” has been interpreted by the Commission as an objective standard for people who participate in the fraud of others. It does not require that a person involved in the scheme have subjective knowledge; but instead widens the effect of the provision such that another participant in the scheme may be found to have committed fraud if they ought to have known that a fraud was being perpetrated by another person involved in the scheme.³¹

1. **False and Misleading Statements in Marketing Materials**

- [105] In this case, each of the statements made in the Marketing Materials outlined in paragraph [77] above involved extravagant deceit. To state that NBW will be launching on the NASDAQ, when there were no indications of any steps being taken to pursue such a listing or any likelihood that such a listing would be accomplished was deceit plain and simple. Where was the listing application or even memoranda describing the listing process and the steps NBW would have to take? Where was the draft SEC registration statement that would have to be cleared or any evidence whatsoever of even the most minor steps being taken to pursue a listing? What was the identity of the US counsel and other advisers such as accountants who were even advising on what a listing entailed? There was not a single iota of evidence that a listing was being pursued other than Mr. Landucci’s statements, including his statement that obtaining additional Canadian investors through Ms. Chickalo was necessary to their plans. The only demonstrated involvement of any law firm was Metro Law Office LLP, which provided a registered address for NBW, apparently processed some corporate organizational documents and processed some share certificates. Inquiries to this law firm by Staff met a response that they had been out of touch with Mr. Landucci for months and did not know how to get in touch with him. Metro Law’s apparent work on the stock certificates and corporate house-keeping was far removed from working on a U.S. registered, NASDAQ listing. The idea expressed by Mr. Landucci that the lawyers were handling everything, but that there would be no follow up by him or evidence to support this legal work is absurd.
- [106] A similarly flamboyant fraudulent statement was that the lowest launch value was \$4.00 creating a minimum 1600% “ROI”, or return on investment. This was not a statement that they would not list unless they could implement an offering at that price or that other companies in particular time periods that were somehow comparable had attained this result, but rather a statement that they were pursuing a listing and that the price would rise to this level. It was stated with such assurance that it is not surprising that CK and CF would believe that some realistic steps were being taken to give effect to this statement, when in fact there were none.
- [107] Likewise, with the statement that they had already raised \$20 million from more than 200 investors having already satisfied one of NASDAQ’s quantitative listing

³⁰ *Theroux* at para 15; *R v Currie* [1984] OJ no 147 (Ont CA) at paras 1, 14 and 33; *R v Zlatic*, [1993] 2 SCR 29 at paras 18-22

³¹ *Bradon Technologies Ltd. (Re)*, 2016 ONSC 19, (2016) 38 OSCB 6763 at para 232

requirements. Again, there is no evidence of money in NBW bank accounts approaching an infinitesimal percentage of these claimed proceeds, no subscription agreements from investors, other than the investors obtained by Ms. Chickalo, or even correspondence with other prospective investors in Canada or elsewhere that would point to this claim being other than an outright lie.

- [108] There was similarly, no evidence of a \$200 million line of credit "to start working with now". No term sheet, no named financial institutions, no loan agreement, nothing.
- [109] There were no orders or even correspondence from corporate customers "waiting for product".
- [110] And there was no evidence to support claims of \$2.8 million in property, including apiaries, equipment and bees.
- [111] If a company were in fact planning to go public, the elements of these claims would be very meaningful. They would create excitement at the prospects of getting in early. Seeing these claims in solicitation materials, especially where there were some pre-existing relationships, as with Ms. Chickalo's relationships with her former candle buying customers, these prospective investors would not jump to the conclusion that these statements were baseless. That was the nature of the deceit perpetrated on these investors. The trust engendered by a prior relationship with Ms. Chickalo's candle business or as friends was absolutely abused in obtaining their funds based upon unfounded claims.
- [112] It was apparent from Ms. Chickalo's evidence that everything she knew about the subject matter of these misrepresentations she learned from Mr. Landucci. They both appeared to take the stance that he communicated this information to her to support her activities for NBW, but, as Ms. Chickalo claims she subsequently learned, this information was not intended to be communicated to others and was for their internal discussions only.
- [113] However, Mr. Landucci made these false statements to Ms. Chickalo, knowing that her primary responsibility, which he assigned to her, was to raise capital from her network of former customers and friends. He never cautioned her that these were dreams rather than an imminent reality, or that she should not communicate them when seeking investors.
- [114] I conclude that Mr. Landucci made these false statements to Ms. Chickalo in order to lure her into her into making such statements in the course of her capital raising role, with actual knowledge that she would pass on this false information to investors in order to pursue this fraudulent scheme.
- [115] With regard to Ms. Chickalo, on the other hand, I concluded that she was wilfully blind about whether these statements were true or false. For whatever reason, she accepted them at face value and ran with them, composing detailed solicitation materials that reflected these false claims, designed to make investing in NBW seem like a sure bet, duping an alleged friend and a former candle customer, among others. Her stated decision not to share the marketing documents with Mr. Landucci, which would have permitted the facts to be checked with him and the appropriateness of their use verified, and her decision not to make additional investigations as a director and one-time president of NBW shows a failure on her part of common sense. I conclude that she

reasonably ought to have known that these statements were false. It was highly unreasonable for her not to test such claims before passing that information on to her friends and former customers. Whether she did not make any investigations because of her apparent admiration of Mr. Landucci and was therefore unquestioning or because she mistakenly thought, due to her stated inexperience, that making unfounded claims to obtain investors was the way of the world in finance, the result is the same. She reasonably ought to have known these statements were false and she thereby participated in the fraudulent scheme.

2. **Misuse of Investor Funds**

[116] Any funds raised based on the false hype in the marketing materials would inherently be misused because they were not invested in an enterprise remotely resembling the one described to investors. The retention of these funds by Mr. Landucci and Ms. Chickalo was completely unjustified and deprived the investors of these funds. The retention of the funds is part and parcel of the fraud and is its natural consequence.

(a) *Mr. Landucci's Use of Proceeds*

[117] To parse whether Mr. Landucci used some of the funds for what could, independent of the fraud, be considered business expenses for allegedly making hive frames, or preparing drawings for alleged patent applications, or attending night markets to sell candles and other items is beside the point. These funds were raised for a company that had the characteristics described in the Marketing Materials, not for a craft company of the scale these alleged business expenses were claimed to have been made.

[118] It is clear that Ms. Chickalo, after retaining certain of the funds for her own purposes, as described below, sent the bulk of the investor proceeds, amounting to approximately \$92,500, to either personal bank accounts for Mr. Landucci or an NBW account for which he was the sole signatory.

[119] The evidence also showed that some of these funds were used for motel payments made by Mr. Landucci. Regardless of whether Mr. Landucci resided at this motel, no credible evidence was presented by Mr. Landucci about the business purpose of the use of the motel. He stated that a person resided there who did translation work for the business, but no contracts, evidence of payments for this purpose, evidence from the purported translator herself or otherwise was provided. He stated that a person resided there who prepared frames for bee hives. However, no evidence was ever provided about the existence of hives other than statements by Mr. Landucci himself, and one purported invoice for hive frames. After many opportunities, he could not supply evidence of either the existence of the hives or his status as a licensed beekeeper in BC. His unlicensed status might have posed limited risks to a craft business, although it would be a violation of the licensing statute, but this was certainly inconsistent with a business preparing to list on NASDAQ, with many international investors and a multi-million dollar line of credit, all involving parties that could reasonably be expected to insist that Mr. Landucci at least was a licensed beekeeper in respect of an alleged multi-million dollar beeswax-based business.

- [120] Mr. Landucci also asserted that the motel was used to house volunteers who assisted in moving hives during BC forest fires. No corroborating evidence was provided about the identity of these volunteers, nor evidence from any of them, or regarding the location or existence of hives.
- [121] Mr. Landucci failed to provide any material business records supporting the vast majority of business expenses he claimed even in respect of his small-scale craft business, while Staff demonstrated funds flowing through personal accounts and accounts he controlled for what on their face were living expenses, including the motel expenses. Mr. Landucci admitted that he spent time at the motel, but disputed that he resided there. Evidence presented by Staff in the form of email correspondence with a motel clerk indicated that Mr. Landucci did, in fact, regularly reside at the motel, notwithstanding that Mr. Landucci was not named in the hotel register.
- [122] I note that the identification through a photo of Mr. Landucci by a motel clerk is hearsay and Staff did not augment this evidence with an affidavit or direct evidence from this clerk. Its status of hearsay does not preclude its admissibility in a proceeding before the Commission, but does go to its weight. In the end, I do not need to decide whether Mr. Landucci resided at this motel as alleged by Staff since I conclude that Mr. Landucci did not use the motel for the business purposes reasonably expected by NBW's investors, and they were therefore deprived of the funds diverted to paying for these motel rooms amounting to approximately \$30,000.
- [123] Whether or not Mr. Landucci regularly used the motel as his abode, he did not demonstrate that the uses of the motel was for purposes consistent with the business description of NBW provided to its investors, and these expenses cannot be said to be for NBW's business purposes as presented to investors. They may have been incurred, in part, for Mr. Landucci's small-scale craft business, housing personnel that he employed in nearby night markets or to house an assistant who helped with drawings in his portfolio of inventions, but these are not activities reasonably associated with the business described to investors involving an advanced pre-NASDAQ listing company with substantial assets, a multi-million dollar line of credit, substantial customers waiting for product and an international investor base. It is not enough that the monies were spent in some business activities to avoid responsibility for depriving investors of their funds; they must be used in a way that the investors would reasonably recognize as involving the business in which they were investing, and that was clearly not the case. At most, Mr. Landucci used some of the funds to carry on his small-scale craft business with some activities at local night markets.
- [124] Another \$20,000 of expenses incurred by Mr. Landucci appear on their face to be personal expenses, and again certainly not used for NBW's described business purposes, and a full \$180,000 in cash withdrawals was simply not accounted for as a business expense in any form.

(b) Ms. Chickalo's Use of Proceeds

- [125] Ms. Chickalo retained approximately \$33,000 of the proceeds raised and spent that money on personal expenses. The evidence demonstrated that she spent approximately \$21,000 on household expenses and approximately \$10,000 on

miscellaneous expenses such as restaurants, entertainment and transportation as well as some unknown cash expenses. She indicated in her investigation interview that the amounts she withheld was compensation for the capital she raised, but later changed her story to state that the amounts were payments for assets transferred to NBW from her former business. It is, however, incontrovertible that the funds she retained were computed based on a commission rate of 5% and sometimes, based on her discussions with Mr. Landucci, a somewhat higher rate based on the amount of funds she raised. She did not get paid from the claimed existing assets of NBW independent of the funds raised from investors or NBW's claimed line of credit, but only through payments that were computed and paid as contingent payments on share sales.

- [126] The subscription materials for the investment stated that no finders' fees or other commissions would be paid in respect of the investment. Whether the amounts she retained were straight commissions or payable like a commission only when share sales were made, in recognition of both her share sales and in order to discharge a liability for the sale of assets, investors were entitled to know that Ms. Chickalo was getting a payment when their share sales went through and that she was personally benefiting from these proceeds and retaining a portion of these funds as her own. Such contingent compensation, even if it also discharged a liability for the sale of assets, only arose from the proceeds from Ms. Chickalo's share sales, and as such constitute a badge of being in the business of selling securities, which was her only established activity for NBW during the Material Time.
- [127] Additionally, the assets apparently acquired from Ms. Chickalo were located in Ontario, never transported to BC where the existing business, such as it was, was being conducted, and an Ontario-based business was a distant prospect for which no concrete steps beyond the apparent acquisition of some old Pheysonian Bee Works assets had taken place and some sales at local craft shows. Such an asset sale characterization does not change the overwhelming nature of the contingent payments as commissions that were contrary to the subscription materials and help demonstrate that Ms. Chickalo was in the business of effecting securities transactions as a dealer.
- [128] As with Mr. Landucci, through the retention of contingent payments from their payments by Ms. Chickalo, investors were deprived of their funds for what was at most a craft business and not the business described to them. Substantial sums, contingent on share sales, were withheld by Ms. Chickalo to support her day to day living expenses. This was contrary to the representations in the subscription agreements that no finders' fees or commissions were payable out of proceeds and constitutes a fraudulent misuse of investor funds.
- [129] In addition, Ms. Chickalo's communications with investors after the issuance of the Temporary Order, giving them the impression that the investigation was a technical exercise that would be cleared up in order to try to assuage their concerns, when she knew that the statements in the Marketing Materials giving rise to their investments, that she acknowledges should not have been shared with prospective investors were being scrutinized, constitutes a further step in her fraud. In this way, she sought to discourage the investors' cooperation in the investigation and their efforts to recover their funds. Ms. Chickalo said that, of course, it was human nature not to fully describe and answer investor

inquiries, that these people were her friends and former candle customers, who she did not wish to alarm. I disagree with this characterization. Ms. Chickalo was seeking to discourage NBW investors from cooperating with the Commission and learning the truth about how the Respondents had swindled them. It was an uncomfortable truth that she did not want to admit, but being caught out and embarrassed is hardly an excuse for misleading these investors about the serious concerns Staff had concerning the Respondents' conduct.

3. Conclusions on Fraud

- [130] The legal test for fraud requires Staff to show (1) that a person or company committed a dishonest act, which can include deceit, falsehood, or other fraudulent means, and (2) that there was a deprivation caused by the dishonesty, and that can mean either an actual loss or putting somebody's funds at risk. The legal test for fraud also requires Staff to show that a person or company knew, or reasonably ought to have known, that they perpetrated a fraud.
- [131] I find that all the Respondents engaged in fraud. The evidence overwhelmingly demonstrated that both the *actus reus* and *mens rea* elements were proven.
- [132] The *actus reus* was established through the evidence of acts of deceit and falsehoods, including: i. the statements made in the Marketing Materials and false facts about NBW otherwise communicated to investors, ii. other fraudulent means including using investor funds in an unauthorized manner for personal purposes or for a business other than that described to investors, iii. exploiting those in close relationships to get them to invest and iv. Ms. Chickalo's communications with investors to disregard the Commission's investigation. Deprivation was caused by the misconduct described above -- investors lost their funds. Specifically, CK and CF did not get either their promised investments or the return of their funds, and they have suffered financially and emotionally through this ordeal.
- [133] The *mens rea* was established through the evidence that Mr. Landucci knowingly communicated false information to Ms. Chickalo that he expected her to use in carrying out her primary function on behalf of NBW at the time -- selling shares. Ms. Chickalo was reckless as to the accuracy of the statements in the Marketing Materials and in the oral statements she made to investors. These false statements were made by her as a high pressure sales tactics to induce investors to part with their funds and, as a direct consequence, investor funds were placed at risk. The Respondents were aware that their conduct could cause deprivation to others, but chose to proceed regardless, obtaining investor funds and using these funds for personal and unauthorized uses.
- [134] The Act's legal test for fraud also widens the effect of the fraud provision such that another participant in the scheme may be found to have committed fraud if they ought to have known that a fraud was being perpetrated by another person involved in the scheme. Mr. Landucci knew about the fraudulent misconduct. He was the mind and management of NBW and created all the facts that were fed to Ms. Chickalo to put into the Marketing Materials for the sole purpose of soliciting funds from investors. He was the architect of the scheme and NBW was his company. As stated above at paragraph [115], Ms. Chickalo followed along in this scheme, never asking questions and turning a blind eye to the

consequences of passing on the false information she was given by Mr. Landucci and her other actions in furtherance of the scheme. Considering the information being provided to her by Mr. Landucci, she reasonably ought to have known that Mr. Landucci's statements were highly questionable and as a director and one-time president of NBW she ought to have taken steps to understand what was actually going on at NBW. Her recklessness in her sales efforts demonstrates that she reasonably ought to have known that a fraud was being perpetrated. As a result, investors were harmed and deprived.

- [135] 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 s. 126.1(1)(b) of the Act.³² As described above, Mr. Landucci was the directing mind of NBW, and was the architect of the fraud, and I therefore find that his company NBW also engaged in fraud.

B. Section 25: Did Chickalo engage in the business of trading without being registered?

- [136] During the Material Time, none of the Respondents was registered in any capacity with the Commission. Ms. Chickalo's only discernible activity for NBW was capital raising for which she earned, as discussed above, contingent compensation. Such compensation was contrary to the representations she and NBW made to these investors that no finders' fees or commissions were payable in connection with these sales of shares. In addition, she engaged in acts in furtherance of trades including soliciting investors, handling paperwork for investments, giving instructions to investors for how to make payments and accepting investor funds into her bank account and writing the Marketing Materials. While she may have had a few non-investment related tasks, taking a holistic view, she overwhelmingly was engaged in the business of selling securities. In this regard, Ms. Chickalo was engaged in the business of trading in securities contrary to s. 25(1) of the Act.
- [137] The onus to show that there was an applicable registration exemption falls on the person relying on the exemption. Ms. Chickalo did not provide any evidence that an exemption to the registration requirement was available. In fact, her testimony at the hearing demonstrated that capital raising was a core responsibility for her and as a result I find that she engaged in the business of trading securities and she was not properly registered.

C. Section 53: Did Chickalo and NBW engage in an illegal distribution?

- [138] There is no doubt that Ms. Chickalo and through her, NBW, effected a distribution in securities for which no exemption was available and for which no prospectus, offering memorandum or any other materials were filed with the Commission. The offers and sales to CK and CF demonstrate these violations and I note that neither of these investors were accredited investors. In making this illegal distribution, Ms. Chickalo and NBW prepared and used Marketing Materials that contained fraudulent misrepresentations designed to give a dramatically false impression of the stage of development in order to induce her investor prospects to invest.

³² *Al-tar Energy Corp (Re)*, 2010 ONSEC 11, (2010) 33 OSCB 5535 at para 221

[139] The onus to show that there was an applicable exemption falls on the person relying on the exemption. Ms. Chickalo and NBW did not provide any evidence that an exemption to the prospectus requirement was available. As stated above, CK and CF were not accredited investors. In addition, the Ontario friends, family and business associates exemption was also not available as some of the investors did not know her, including CF who had never met her in person and was a customer from her website. Furthermore, this exemption requires a risk acknowledgment to be signed by the investor and no such evidence was produced.

D. Section 126.2: Did the Respondents make misleading or untrue statements?

[140] In their submissions, Staff explained that they are seeking a breach of s. 126.2 as an alternative finding that the Panel can make if the Panel is not persuaded that a particular Respondent committed fraud by making misleading and untrue statements in the Marketing Materials. Staff clarified that they are not seeking a duplicative finding with two breaches found for the same misleading and untrue statements.

[141] Since I have found that the Respondents made fraudulent misrepresentations, following the principles in *R v Kienapple*³³ and *Lewis (Re)*³⁴ to the effect that the same misconduct should not form a basis for separate overlapping contraventions, I decline to find a violation of s. 126.2.

E. Subsection 38(3): Did the Respondents make prohibited representations that the securities of NBW would be listed on an exchange?

[142] Staff alleges that the Respondents' misrepresentation in the Marketing Materials regarding the NASDAQ listing, in addition to being a fraudulent misrepresentation, also contravenes the prohibition in s. 38(3) of the Act, which prohibits representations of listing on "any stock exchange" for the purpose of inducing a trade in a security.

[143] Subsection 38(3) is not limited to representations regarding recognized exchanges as defined in the Act, instead, s. 38(3) uses the broader language "any stock exchange" which I interpret as being in any jurisdiction. Staff cited several Commission precedents in which this violation was established based on promises of a U.S. Listing.³⁵

[144] Ms. Chickalo's statements regarding a NASDAQ listing, which she stated she learned from Mr. Landucci, contravenes this prohibition. NBW has also contravened s. 38(3) as the misrepresentation was made in NBW's Marketing Materials. As with the other misrepresentations, I find that Mr. Landucci conveyed this information to Ms. Chickalo with the purpose that she would use it in her capital raising activities to induce investors to invest. He is the creator of the misrepresentation and equally responsible for such misrepresentation and

³³ [1975] 1 SCR 729

³⁴ 2011 ONSEC 29, (2011) 34 OSCB 11127 at para 235

³⁵ See for example: *Limelight Entertainment Inc (Re)*, 2008 ONSEC 4, (2008) 31 OSCB 1727; *Mega-C Power Corporation (Re)*, 2010 ONSEC 19, (2010) 33 OSCB 8290; and *York Rio Resources Inc (Re)*, 2013 ONSEC 10, (2013) 36 OSCB 3499

contravened this prohibition by making this statement to Ms. Chickalo for this purpose.

[145] While Staff did not submit that the s. 38(3) allegation is an alternative finding to the fraud allegation, I find that the principles in *R v Kienapple*³⁶ and *Lewis (Re)*³⁷ are also engaged in this situation. In *R v Kienapple*, the Supreme Court of Canada explained that:

If there is a verdict of guilty on the first count and the same or substantially the same elements make of the offence charges in a second count, the situation invites application of a rule against multiple convictions.³⁸

[146] While the *Kienapple* case was decided in a criminal law context, in my view, the same principle equally applies in the Commission's securities regulatory context. The same misconduct should not form a basis for separate overlapping contraventions.

[147] I acknowledge that the fraud provision s. 126.1(1)(b) and prohibited listing representation set out in s. 38(3) of the Act serve different purposes and in many cases, violations under each of these separate provisions may be found based on statements regarding the listing of securities. However, in this specific case, where the misrepresentation that a NASDAQ listing was going to be attained was fraudulent and overlaps with a prohibited representation under s. 38(3) that the securities will be listed on an exchange, it is inappropriate to make a second finding for purposes of a breach of s. 38(3).

[148] If the allegation of fraud had not be made out by Staff, then I would have found that the Respondents made a fraudulent misrepresentation regarding the prospect of a NASDAQ listing as set out above in paragraph [144]. However, following the principle that the same misconduct should not form a basis for separate overlapping contraventions, I decline to find a violation of s. 38(3) of the Act.

F. Section 129.2: Did Landucci authorize, permit or acquiesce in the non-compliance with the Act by NBW?

[149] Mr. Landucci was the directing mind of NBW. He was the architect of the scheme. He defined Ms. Chickalo's role and was the person who provided her with fraudulent information, which she transmitted to investors. He is NBW's sole director. I find that pursuant to s. 129.2 he authorized and permitted all of the breaches of the Act that I have found to have been committed by NBW and as a result is deemed to also not have complied with Ontario securities law.

VII. CONCLUSION

[150] For the reasons stated above, I find that during the Material Time that:

- a. Ms. Chickalo engaged in the business of trading in securities without the necessary registration or an applicable exemption from the registration requirement, contrary to s. 25 of the Act;

³⁶ [1975] 1 SCR 729

³⁷ 2011 ONSEC 29, (2011) 34 OSCB 11127 at para 235

³⁸ [1975] 1 SCR 729 at para 16

- b. NBW and Ms. Chickalo traded in securities that would constitute a distribution without a prospectus and without an applicable exemption from the prospectus requirement, contrary to s. 53 of the Act;
- c. NBW and Mr. Landucci engaged in and participated in an act, practice or course of conduct relating to securities that they knew perpetrated a fraud on the investors, contrary to s. 126.1(1)(b) of the Act;
- d. Ms. Chickalo engaged in and participated in an act, practice or course of conduct relating to securities that she reasonably ought to have known perpetrated a fraud on the investors, contrary to s. 126.1(1)(b) of the Act; and
- e. In the case of Mr. Landucci, pursuant to s. 129.2 he authorized and permitted all of the breaches of the Act committed by NBW and as a result is deemed to not have complied with Ontario securities law.

[151] Section 127 of the Act permits the Commission to make orders where conduct is contrary to the public interest and harmful to the integrity of capital markets. A number of sanctions are available to the Commission to meet the protective and preventative purposes of the Act.

[152] I find that the public interest mandate of the Commission has been engaged by the evidence heard in this matter and I will issue a separate order scheduling the sanctions and costs hearing and related filing timelines as follows:

- a. Staff shall serve and file written submissions on sanctions and costs by 4:00 p.m. (Toronto time) on July 19, 2019;
- b. The Respondents shall serve and file responding written submissions on sanctions and costs by 4:00 p.m. (Toronto time) on August 2, 2019;
- c. Reply submissions of Staff, if any, shall be made orally at the sanctions and costs hearing; and
- d. the sanctions and costs hearing shall be held by video conference and at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, Ontario, on August 6, 2019 at 10:00 a.m. (Toronto time), or such other dates and times as provided by the Office of the Secretary and agreed to by the parties.

Dated at Toronto this 3rd day of July, 2019.

"D. Grant Vingoe"

D. Grant Vingoe