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Securities
Commission

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

AND

**IN THE MATTER OF
LIMELIGHT ENTERTAINMENT INC., CARLOS A. DA SILVA,
DAVID C. CAMPBELL, JACOB MOORE,
AND JOSEPH DANIELS**

REASONS AND DECISION ON SANCTIONS AND COSTS

Hearing: September 11, 2008

Decision: December 10, 2008

Panel: James E. A. Turner - Vice-Chair and Chair of the Panel
Suresh Thakrar - Commissioner

Counsel: Derek Ferris - For the Ontario Securities Commission
Larry Masci

No one appeared for Limelight Entertainment Inc., Carlos A. Da Silva, David C. Campbell or Joseph Daniels

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. BACKGROUND

[1] This was a bifurcated hearing before the Ontario Securities Commission (the “Commission”) pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), to consider whether it is in the public interest to make an order with respect to sanctions and costs (the “Sanctions and Costs Hearing”) against Limelight Entertainment Inc. (“Limelight”), Carlos A. Da Silva (“Da Silva”), David C. Campbell (“Campbell”) and Joseph Daniels (“Daniels”).

[2] On April 13, 2006, the Commission issued a temporary cease trade order (the “First Temporary Order”) pursuant to subsections 127(1) and 127(5) of the Act against Limelight, Da Silva, Campbell and Jacob Moore (“Moore”). The terms of the First Temporary Order were that all trading in the securities of Limelight cease; that Limelight, Da Silva, Campbell and Moore cease trading in all securities; and that the exemptions contained in Ontario securities law do not apply to Limelight, Da Silva, Campbell and Moore.

[3] On April 25, 2006, an Amended Notice of Hearing and Amended Statement of Allegations were issued adding Daniels as a respondent.

[4] On April 26, 2006, the First Temporary Order was extended and its terms were amended to include Daniels (the “Amended Temporary Order”). The terms of the Amended Temporary Order were that Daniels cease trading in all securities and that the exemptions contained in Ontario securities law do not apply to him. The Amended Temporary Order also required Limelight to provide the Notice of Hearing in this proceeding to its shareholders. The Amended Temporary Order was extended on May 11, 2006, September 12, 2006 and October 30, 2006 and is still in effect.

[5] Staff and Moore entered into a settlement agreement that was approved by order of the Commission on August 2, 2007 (*Re Limelight (2007)*, 30 O.S.C.B. 8368). Limelight, Da Silva, Campbell and Daniels are the remaining respondents in this proceeding. In these reasons, Limelight, Da Silva, Campbell and Daniels are referred to collectively as the “Respondents”.

[6] On September 28, 2007, Staff and Da Silva entered into an Agreed Statement of Facts (the “Agreed Statement”) in which Da Silva admitted breaches of the Act but did not agree to sanctions.

[7] The hearing on the merits was held on October 1, 2007 and a decision was rendered on February 12, 2008 (*Re Limelight et al. (2008)*, 31 O.S.C.B. 1727) (the “Merits Decision”). None of Limelight, Campbell or Daniels attended the hearing on the merits. The Commission was satisfied that Limelight and Campbell received proper notice of the hearing and that reasonable attempts to locate and give notice to Daniels were made by Staff. Da Silva was

present and represented at the commencement of the hearing, but left the hearing room and did not participate after the Agreed Statement was entered into evidence.

[8] The Sanctions and Costs Hearing was held on September 11, 2008. None of the Respondents appeared before the Commission or made submissions. Staff made oral and written submissions to the Commission on sanctions and costs.

[9] While none of the Respondents attended the Sanctions and Costs Hearing, the Commission was satisfied that it was entitled to proceed to hear the submissions of Staff as to sanctions and costs as permitted under section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA"). Section 7 of the SPPA provides as follows:

Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[10] These are our reasons and decision as to the appropriate sanctions and costs against the Respondents.

II. THE DECISION ON THE MERITS

[11] Staff's Statement of Allegations dated April 7, 2006, and the Amended Statement of Allegations dated April 25, 2006, raised the following issues:

- (a) Did Limelight, Da Silva, Campbell and Daniels breach the registration and prospectus requirements of the Act by trading in Limelight shares contrary to subsections 25(1) and 53(1) of the Act in circumstances where the "accredited investor" exemption was not available under OSC Rule 45-501, *Prospectus and Registration Exemptions* (now NI 45-106) ("Rule 45-501")?
- (b) Did Limelight, Da Silva and Campbell give undertakings regarding the future value of Limelight shares, with the intention of effecting sales of Limelight shares, contrary to subsection 38(2) of the Act?
- (c) Did Limelight, Da Silva, Campbell and Daniels make representations regarding the future listing of Limelight shares with the intention of effecting sales of Limelight shares, contrary to subsection 38(3) of the Act?
- (d) Did Da Silva mislead Staff, contrary to clause 122(1)(a) of the Act, when he advised Staff that (i) Limelight shareholders were accredited investors, (ii) Limelight salespersons always enquired to confirm that sales of Limelight shares were made only to accredited investors, (iii) no scripts were used by Limelight salespersons, (iv) Limelight salespersons also acted as project

managers of Limelight's business, and (v) he did not know whether Limelight shares were sold to Ontario investors in 2005?

- (e) Did Limelight and Da Silva file misleading or untrue reports of exempt distributions with the Commission contrary to clause 122(1)(b) of the Act?
- (f) Did Limelight, Da Silva, Campbell and Daniels breach the First Temporary Order or the Amended Temporary Order?
- (g) Was the conduct of Limelight, Da Silva, Campbell and Daniels contrary to the public interest?

[12] The Commission found in the Merits Decision that:

- (a) Limelight, Da Silva, Campbell and Daniels contravened subsection 25(1) of the Act by trading in Limelight shares without registration where no exemption was available (Merits Decision, *supra* at paras. 144, 146, 149, 152, 155, 158 and 215);
- (b) Limelight employed several employees, including Ove Simonsen, Moore and Daniels, who were involved solely in selling Limelight shares to investors. Limelight and its salespersons were acting as market intermediaries in the circumstances, without registration, in breach of subsection 25(1) of the Act (Merits Decision, *supra* at para. 146);
- (c) Limelight, Da Silva, Campbell and Daniels contravened subsection 53(1) of the Act by distributing previously unissued Limelight shares where no prospectus was filed and no exemption was available (Merits Decision, *supra* at paras. 140 and 216);
- (d) it was not satisfied that Limelight, Da Silva and Campbell gave undertakings regarding the future value of Limelight shares contrary to subsection 38(2) of the Act, but the Commission did find that those Respondents made representations and used high pressure sales tactics that were improper, unacceptable and contrary to the public interest (Merits Decision, *supra* at para. 217);
- (e) Limelight, Da Silva and Campbell made representations regarding the future listing of Limelight shares on an exchange with the intention of effecting sales of Limelight shares contrary to subsection 38(3) of the Act, but the Commission was not satisfied that Staff proved that Daniels did so (Merits Decision, *supra* at paras. 183-185, 210 and 218);

- (f) Da Silva lied to and misled Staff contrary to clause 122(1)(a) of the Act (Merits Decision, *supra* at para. 219). Specifically, Da Silva admitted and acknowledged that he misled Staff during the investigation in two ways: (1) by advising Staff initially that Limelight shares were sold only to accredited investors, and (2) by claiming that no scripts were used by Limelight salespersons (Merits Decision, *supra* at paras. 187 and 188);
- (g) Limelight and Da Silva filed misleading and untrue reports of exempt distributions with the Commission contrary to clause 122(1)(b) of the Act (Merits Decision, *supra* at para. 220). Specifically, the Commission found that Limelight filed documents containing inaccurate dates and misrepresented that the accredited investor exemption was properly relied upon for distributions of Limelight shares. Similarly, the Limelight filings failed to disclose payment of commissions and other fees as required by the Act. Da Silva, or someone on his behalf, signed and certified all of the documents containing these misleading statements (Merits Decision, *supra* at para. 196);
- (h) Limelight, Da Silva and Campbell breached the First Temporary Order, and Limelight and Campbell breached the Amended Temporary Order, contrary to clause 122(1)(c) of the Act (Merits Decision, *supra* at para. 221). The Commission also held that depositing investor cheques into a Limelight bank account held by Limelight constituted acts in furtherance of trades and that, depending on their date, such deposits violated the conditions of the First Temporary Order or the Amended Temporary Order (Merits Decision, *supra* at para. 203). In addition, the Commission found that, even after the issue of the Amended Temporary Order, several hundred telephone calls were made, and information was sent by courier, to potential investors and cheques from investors were received (Merits Decision, *supra* at paras. 204 and 205).
- (i) it was not satisfied that Staff proved that Daniels breached either the First Temporary Order or the Amended Temporary Order (Merits Decision, *supra* at para. 221);
- (j) Limelight, Da Silva, Campbell and Daniels acted contrary to the public interest by breaching important provisions of the Act intended to protect investors (Merits Decision, *supra* at para. 222). The Commission found that the Respondents were acting with the common purpose of selling Limelight securities. While doing so, “they preyed on investors with limited resources and financial experience” (Merits Decision, *supra* at para. 208). The Commission concluded that:

... the Respondents breached a number of key provisions of the Act intended to protect investors. Their conduct was egregious. It caused great harm to investors and to the integrity of

Ontario's capital markets, and was clearly contrary to the public interest (Merits Decision, *supra* at para. 213);

- (k) Limelight, Da Silva and Campbell made “prohibited representations with respect to the future listing of Limelight shares on a stock exchange and used high pressure sales tactics that included improper and unacceptable representations as to the future value of Limelight shares” (Merits Decision, *supra* at para. 210);
- (l) the purported use of the accredited investor exemption by Limelight, Da Silva, Campbell and Daniels “was little more than a smoke screen for their blatant disregard of Ontario securities law” (Merits Decision, *supra* at para. 209).

[13] The Commission also concluded that Da Silva and Campbell were the directing minds of Limelight and they were aware of and authorized, permitted or acquiesced in Limelight's breaches of the Act (Merits Decision, *supra* at paras. 116 and 118). Limelight, Da Silva and Campbell raised approximately \$2.75 million from 611 investors located in all ten provinces of Canada and from investors outside of Canada (Merits Decision, *supra* at para. 25). This included 71 investors who were Ontario residents (Merits Decision, *supra* at para. 26). The Commission noted in the Merits Decision that it appears that the investors in Limelight have lost all of their investment (Merits Decision, *supra* at para. 208).

III. SANCTIONS REQUESTED BY STAFF

[14] In their written and oral submissions, Staff requested that the following orders be made against the Respondents:

- (a) that Limelight, Da Silva and Campbell cease trading in securities permanently, with the exception that Da Silva and Campbell be permitted to trade securities for the account of their registered retirement savings plans (as defined in the Income Tax Act (Canada) (the “Tax Act”));
- (b) that any exemptions contained in Ontario securities law not apply to Limelight, Da Silva and Campbell permanently, except for the exemptions needed to trade in securities in the manner permitted by paragraph (a) above;
- (c) that Daniels cease trading in securities for 10 years, with the exception that Daniels be permitted to trade securities for the account of his registered retirement savings plans (as defined in the Tax Act);
- (d) that any exemptions contained in Ontario securities law not apply to Daniels for 10 years, except for the exemptions needed to trade in securities in the manner permitted by paragraph (c) above;

- (e) that Da Silva and Campbell be prohibited permanently from becoming or acting as a director or officer of any issuer;
- (f) that Limelight, Da Silva, Campbell and Daniels be permanently prohibited from telephoning residences within or outside Ontario for the purpose of trading in securities;
- (g) that Limelight, Da Silva and Campbell each pay an administrative penalty of \$200,000 for failing to comply with Ontario securities law;
- (h) that Daniels pay an administrative penalty of \$50,000 for failing to comply with Ontario securities law;
- (i) that Limelight, Da Silva and Campbell jointly disgorge to the Commission \$2,747,089.45;
- (j) in the alternative to (i), that Limelight disgorge \$2,747,089.45 and each of Da Silva and Campbell disgorge the amounts they received from Limelight; and
- (k) that Limelight, Da Silva, Campbell and Daniels jointly and severally pay the costs of Staff's investigation and this proceeding in the amount of \$154,979.79 plus \$5,637.29 in disbursements.

[15] In Staff's submission, the sanctions requested are appropriate in light of the Respondents' serious breaches of the Act and conduct contrary to the public interest.

IV. THE LAW ON SANCTIONS

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

[17] In exercising its public interest jurisdiction, the Commission must act in a protective and preventative manner, as stated by the Commission in *Re Mithras Management Ltd*:

...the role of this Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be

expected to be; we are not prescient, after all (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at pp. 1610-1611).

[18] The Supreme Court of Canada has described the Commission's public interest jurisdiction as follows:

The purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the [Commission] under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43).

[19] In addition, the Commission should consider general deterrence as an important factor when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60, the Supreme Court of Canada stated that "... it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

[20] In determining the appropriate sanctions in this matter, we must ensure that the sanctions imposed are proportionate to the conduct involved (*Re M.C.J.C. Holdings Inc. and Michael Cowpland*, (2002), 25 O.S.C.B. 1133 ("*Re M.C.J.C. Holdings*") at para. 26).

[21] The Commission has previously identified the following as some of the factors that the Commission should consider when imposing sanctions:

- (a) the seriousness of the conduct and the breaches of the Act;
- (b) the respondent's experience in the marketplace;
- (c) the level of a respondent's activity in the marketplace;
- (d) whether or not there has been recognition by a respondent of the seriousness of the improprieties;
- (e) whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets;
- (f) the size of any profit obtained or loss avoided from the illegal conduct;
- (g) the size of any financial sanction or voluntary payment;

- (h) the effect any sanctions may have on the ability of a respondent to participate without check in the capital markets;
- (i) the reputation and prestige of the respondent;
- (j) the remorse of the respondent; and
- (k) any mitigating factors.

(See *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at page 7746; and *Re M.C.J.C. Holdings Inc.*, *supra* at para. 26)

V. ANALYSIS

A. Appropriate Sanctions in this Case

1. The Seriousness of the Allegations Proven

(i) Staff's Submissions

[22] In Staff's view, the conduct of the Respondents is of the most serious nature, and as a result, Limelight, Da Silva and Campbell should be permanently banned from trading securities in Ontario, while Daniels should be subject to a 10 year trading ban. Staff has proposed an RRSP exception to such trading bans.

[23] To justify the trading bans sought, Staff referred us to Commission decisions that have dealt with conduct similar to that before us.

[24] First, Staff relied on the decision in *Re E. A. Manning* (1995), 18 O.S.C.B. 5317 ("*Manning*"). In *Manning* members of the public were solicited to invest by cold-calls from a boiler room. If a member of the public showed any interest, high pressure sales tactics were then used to sell penny stocks to those individuals. Subsequent calls were made to sell more securities or to convince the investors not to sell the securities they had already purchased. The Commission found that the respondents were engaged in a "boiler room" operation and that such activity was inherently contrary to the public interest. The Commission ordered that the principals of E. A. Manning Limited ("E. A. Manning") be permanently banned from Ontario capital markets and ordered 10 and 5 year trading bans against E. A. Manning salespersons.

[25] Staff also referred us to the decision in *Re Marchment & Mackay Ltd.* (1999), 22 O.S.C.B. 6446 and (1999), 22 O.S.C.B. 4705 ("*Marchment*"). The operations of Marchment & Mackay Ltd. ("Marchment Ltd.") were similar to those of E. A. Manning. Cold-callers made the initial contact with the public. Junior salespersons then attempted to make initial

sales. Later senior salespersons attempted to sell larger numbers of securities to potential investors. The Commission found that Marchment Ltd.'s core business was the sale of low cost, high risk penny stocks from its own inventory to members of the public. The Commission also found that allowing that business to continue would result in serious risk to the integrity of the capital markets. The Commission ordered that Marchment Ltd. and its principal be permanently banned from Ontario capital markets and ordered 10, 7 and 5 year trading bans against individual Marchment Ltd. salespersons.

[26] Staff also referred to the findings and sanctions ordered against the Respondents by the New Brunswick Securities Commission ("NBSC") in *Limelight Entertainment Inc.*, Decision, Reasons for Decision and Order, dated August 17, 2007 (unreported) (the "NBSC Limelight Decision") and by the Alberta Securities Commission ("ASC") in *Limelight Entertainment Inc.*, 2007 ABASC 914, dated December 12, 2007 (the "ASC Limelight Decision"). Those orders related to some of the same conduct and transactions that were referred to in evidence before us. The NBSC ordered a permanent trading ban against Limelight, Da Silva and Campbell. The NBSC also imposed administrative penalties of \$100,000 against Limelight and Da Silva, and \$150,000 against Campbell. The ASC imposed an administrative penalty of \$100,000, a 10 year trading ban and a 10 year director and officer ban against Da Silva. The ASC ordered an administrative penalty of \$75,000, an 8 year trading ban and an 8 year director and officer ban against Campbell.

(ii) Analysis

[27] The Commission found in the Merits Decision that the Respondents' conduct in this matter was egregious and showed a blatant disregard of Ontario securities law (Merits Decision, *supra* at paras. 209 & 213). Vulnerable investors were severely harmed and cumulatively lost more than two million dollars.

[28] The Respondents' actions "breached a number of key provisions of the Act intended to protect investors" (Merits Decision, *supra* at para. 213) and those breaches "caused great harm to investors and to the integrity of Ontario's capital markets, and [were] clearly contrary to the public interest" (Merits Decision, *supra* at para. 213). Two victim impact statements were tendered in evidence as examples of the serious harm caused to investors.

[29] We agree with Staff's submission that boiler rooms that use unregistered sales persons and high pressure sales tactics to sell securities to unsophisticated and vulnerable investors are simply unacceptable and such conduct must be dealt with severely.

[30] As stated in *Manning*, "Boiler Room activity consists essentially of offering to customers securities of certain issuers in large volume by means of an intensive selling campaign through numerous salesmen by telephone or direct mail, without regard to the suitability to the needs of the customer, in such a manner as to induce a hasty decision to buy the security being offered without disclosure of the material facts about the issuer" (*Manning*, *supra* at para. 88). Similarly in *Re First Global et al.* (2008), 31 O.S.C.B. 10869 at para. 49, the Commission emphasized that high pressure sales techniques, selective solicitation of

vulnerable investors, solicitations made without regard to the investor's needs and without regard to the requirements of the Act, damage the integrity of the capital markets and is activity contrary to the public interest.

[31] That is the same type of boiler room activity that took place in this matter. The Merits Decision found that the Respondents "used high pressure sales tactics that included improper and unacceptable representations as to the future value of Limelight shares" and that this activity was contrary to the public interest (Merits Decision, *supra* at para. 210). We would add that the securities of Limelight sold to investors appear to have been of dubious or no value.

[32] In both *Manning* and *Marchment*, the corporate respondents were registrants, while in the case before us, Limelight is not a registrant. Staff referred us to the decision in *Re Koonar* (2002), 25 O.S.C.B. 2691 in support of the principle that the same sanctioning considerations that apply to registrants may also apply to non-registrants. In that case, the Commission found that "in reviewing the appropriateness of sanctions based on past cases we do not think it appropriate to distinguish between cases where the respondents were registrants and those cases where the respondents were not registrants but were selling securities without registration or through fraudulent, manipulative or unfair means" (*Re Koonar, supra* at p. 2691). We agree with the application of that principle in the circumstances before us. While Limelight and the other Respondents were not registrants, they engaged in very serious misconduct that harmed investors. Reduced sanctions should not be imposed simply because Limelight and the other Respondents are not registrants. We note that, in any event, Da Silva was formerly registered with the Commission as a securities salesperson with Marchment Ltd. during the period that Marchment Ltd. engaged in the actions that the Commission has previously found to be contrary to the public interest. Da Silva was aware of the registration and prospectus requirements of the Act and ought to have been fully aware that his actions constituted serious breaches of Ontario securities law.

[33] In considering the factors referred to in paragraph 21 above, we take into account particularly the following:

- (a) Limelight securities were sold to the public, raising approximately \$2.75 million from investors (Merits Decision, *supra* at para. 25). Staff estimated that 611 investors were affected in total, of whom 71 were Ontario residents;
- (b) the conduct of the Respondents was egregious. They breached a number of key provisions of the Act intended to protect investors. This caused great harm to investors and to the integrity of Ontario's capital markets and is contrary to the public interest (Merits Decision, *supra* at para. 213).
- (c) it appears that investors have lost the full amount of their investment (Merits Decision, *supra* at paras. 208 and 213). That has had a devastating effect on the investors from whom we heard evidence;

- (d) Limelight, Da Silva and Campbell made illegal representations to investors “with respect to the future listing of Limelight shares on a stock exchange and used high pressure sales tactics that included improper and unacceptable representations as to the future value of Limelight shares” (Merits Decision, *supra* at para. 210). “Salespersons at Limelight made repeated representations as to the future listing of Limelight shares on a stock exchange. The scripts provided to salespersons by Campbell, as well as the ‘rebuttal sheets’, mention both future listing and future share price” (Merits Decision, *supra* at para. 192);
- (e) Da Silva lied to and made a number of misleading statements to Staff (Merits Decision, *supra* at paras. 189, 193 and 220);
- (f) Limelight, Da Silva and Campbell knowingly breached the First Temporary Order and/or the Amended Temporary Order. Specifically, the Merits Decision found that: “Limelight breached the First Temporary Order by continuing to trade after the First Temporary Order was issued, that Da Silva breached the First Temporary Order by depositing cheques in Limelight’s bank account on April 13 and April 20, and that Campbell breached the Amended Temporary Order by depositing cheques in Limelight’s bank account on April 26 and thereafter. We also find that Da Silva and Campbell authorized, permitted or acquiesced in Limelight’s breach of the First Temporary Order and the Amended Temporary Order” (Merits Decision, *supra* at para. 207); and
- (g) none of the Respondents have expressed any remorse.

[34] In considering sanctions, we recognize that Da Silva and Campbell were the directing minds of Limelight. They committed illegal acts both personally and through their control or direction over Limelight and its salespersons. Campbell ran the Limelight office and trained and supervised the salespersons. Accordingly, in our view, Da Silva and Campbell are legally responsible for all of the actions of Limelight.

[35] The evidence indicates that Daniels was much less involved in the sale of securities to investors than Limelight, Da Silva and Campbell. Daniels traded in securities in breach of the Act, but he was not a directing mind of Limelight, he had less responsibility for the breaches of the Act by Limelight and the evidence did not disclose that he was significantly involved in selling Limelight securities to investors.

[36] We recognize that in imposing sanctions, we must do so (a) based only on the findings in the Merits Decision, on the Agreed Statement and on the other evidence presented at the merits hearing and the sanctions hearing (see for example, *Re First Global et al*, *supra* at para. 65); (b) in respect of trades and acts in furtherance of trades that occurred in Ontario; and (c) with the objective of protecting Ontario investors and Ontario capital markets.

[37] Overall, the sanctions imposed must protect investors and Ontario capital markets by barring or restricting the Respondents from participating in those markets in the future and by

sending a clear message to the Respondents and to others participating in our capital markets that these types of illegal activities and abusive sales practices will simply not be tolerated.

2. Barring Participation in Ontario Capital Markets

(i) Staff's Submissions

[38] Staff has requested the Commission to make the following orders against Limelight, Da Silva and Campbell:

- (a) a permanent cease trade order (subject to an RRSP carve out);
- (b) a permanent removal of exemptions order (subject to the RRSP carve out);
- (c) a permanent ban from being or acting as a director or officer of any issuer; and
- (d) a permanent ban from telephoning residences within or outside Ontario for the purpose of trading in securities.

[39] Staff has also requested the Commission to make the following orders against Daniels:

- (a) a 10 year cease trade order (subject to an RRSP carve out);
- (b) a 10 year removal of exemptions order (subject to the RRSP carve out); and
- (c) a permanent ban from telephoning residences within or outside Ontario for the purpose of trading in securities.

[40] Staff submits that such orders are necessary in the public interest to protect investors and the Ontario capital markets from future misconduct by the Respondents. Staff submits that such orders are appropriate given the specific conduct of the Respondents in this case and the serious breaches by them of key provisions of the Act.

(ii) Conclusions as to Trading and Other Sanctions

[41] The activities of the Respondents in this matter involved illegally selling securities to investors through "cold calls" made to their residences in which illegal or misleading representations were made and high pressure sales tactics were used. Da Silva and Campbell used Limelight as a vehicle to conduct those illegal activities. The provisions of the Act that were breached by the Respondents are intended to protect investors from just such conduct. We will not repeat here the seriousness with which we view the Respondents' conduct and their breaches of the Act. It is important that our order protect investors in Ontario by restraining future market participation and conduct by the Respondents. Limelight, Da Silva and Campbell have demonstrated by their conduct that they should not be permitted to participate on an on-going basis in Ontario capital markets. Accordingly, we have concluded

that it is in the public interest to make the following orders against Limelight, Da Silva and Campbell (as requested by Staff):

- (a) a permanent cease trade order (subject to an RRSP carve out);
- (b) a permanent removal of exemptions order (subject to the RRSP carve out);
- (c) a permanent ban from being or acting as a director or officer of any issuer; and
- (d) a permanent ban from telephoning residences within or outside Ontario for the purpose of trading in securities.

[42] We have also concluded that it is in the public interest to make the following orders against Daniels (as requested by Staff):

- (a) a 10 year cease trade order (subject to an RRSP carve out);
- (b) a 10 year removal of exemptions order (subject to the RRSP carve out); and
- (c) a permanent ban from telephoning residences within or outside Ontario for the purpose of trading in securities.

3. Disgorgement

(i) Staff's Submissions Regarding Disgorgement

[43] Staff submits that Limelight, Da Silva and Campbell should be ordered to jointly disgorge to the Commission \$2,747,089.45, the aggregate amount that Limelight obtained from investors.

[44] In the alternative, Staff requests an order that Limelight disgorge \$2,747,089.45 and each of Da Silva and Campbell disgorge the amounts they personally received from Limelight.

[45] In support of its disgorgement request, Staff referred us to *Re Allen* (2006), 29 O.S.C.B. 3944 (“*Allen*”) and *Re Momentas Corp.* (2007), 30 O.S.C.B. 6475 (“*Momentas*”). *Allen* involved high pressure sales to investors and the Commission ordered a permanent trading ban against Joseph Edward Allen (“J. E. Allen”) and disgorgement of substantially all fees received by him, whom it found to be the directing mind behind the investment scheme. In *Momentas*, the Commission found that Momentas Corp.’s core business involved the selling of convertible debentures in breach of the registration requirements of the Act. The Commission ordered that all the respondents permanently cease trading and ordered that two of the individual respondents (the principals of Momentas Corp.) disgorge the proceeds personally received by them as a result of the illegal sales.

[46] Staff also made submissions relating to the purpose of the disgorgement remedy and what factors the Commission should consider when deciding whether to order disgorgement.

(ii) Applying the Disgorgement Remedy

[47] As background, the disgorgement remedy was added to the Act based on recommendations contained in the final report of the Five Year Review Committee, *Reviewing The Securities Act of Ontario* (the “Five Year Review Report”). That report stated that the objective of the disgorgement remedy is to deprive a wrongdoer of ill-gotten gains, reflecting the view that it would be inappropriate for those who contravene Ontario securities law to be able to retain any illegally obtained profits. (*Five Year Review Committee, “Reviewing the Securities Act (Ontario)” Final Report* (2003), at p. 218, online at www.osc.gov.on.ca/Regulation/FiveYearReview/fyr_20030529_5yr-final-report.pdf)

[48] The Five Year Review Report referred to the United States Securities and Exchange Commission (“SEC”) disgorgement powers and noted that the following principles have been established in SEC decisions:

- (a) the SEC has ruled that disgorgement is “an equitable remedy designed to deprive [respondents] of all gains flowing from their wrong, rather than to compensate the victims of the fraud” (*In the Matter of Guy P. Riordan*, Initial Decision, 2008 SEC LEXIS 1754 at p. 68.);
- (b) the SEC has ruled that “any risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose illegal conduct created that uncertainty” (*In the Matter of Pritchard Capital Partners, LLC et al.*, Initial Decision, 2008 SEC LEXIS 1593 at p. 51); and
- (c) the SEC has ruled that once the SEC has established a disgorgement figure, the burden shifts to the respondent to disprove the reasonableness of that number (*In the Matter of Thomas C. Bridge et al.*, Initial Decision, 2008 SEC LEXIS 533 at p. 99).

Although we are not bound by SEC decisions, we agree with these general principles, subject to the comments below.

[49] We note that paragraph 10 of subsection 127(1) of the Act provides that disgorgement can be ordered with respect to “any amounts obtained” as a result of non-compliance with the Act. Thus, the legal question is not whether a respondent “profited” from the illegal activity but whether the respondent “obtained amounts” as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the “profit” made as a result of the activity. This approach also avoids the Commission having to determine how “profit” should be calculated in any particular circumstance. Establishing how much a respondent obtained as a result of his or her misconduct is a much more straightforward test. In our view, where there is a

breach of Ontario securities law that involves the widespread and illegal distribution of securities to members of the public, it is appropriate that a respondent disgorge all the funds that were obtained from investors as a result of that illegal activity. In our view, such a disgorgement order is authorized under paragraph 10 of subsection 127(1) of the Act.

[50] In *Allen*, the respondent submitted that he did not make the full amount attributed to him in profits because of the very substantial costs of the offering and the 20% commissions paid to salespersons. It appeared to be the respondent's submission that any order to disgorge amounts obtained should have regard only to "net" amounts obtained as opposed to "gross" amounts. On this issue, the Commission stated:

It is Staff's submission that the wording of the legislation permits the panel to order disgorgement of the gross amount obtained. Further, Staff submitted that the legislation should not be read so as to restrict any disgorgement order to the net amount obtained as to do so would reduce the deterrent effect of the disgorgement sanction. (*Allen, supra* at para. 36)

The Commission concluded by stating that "we agree with Staff's submission on the interpretation of subsection 127(1) clause 10 of the Act" (*Allen, supra* at para. 37).

[51] That analysis and conclusion in *Allen* is consistent with the approach we have discussed above.

[52] In our view, the Commission should consider the following issues and factors when contemplating a disgorgement order in circumstances such as these:

- (a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;
- (b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;
- (c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;
- (d) whether the individuals who suffered losses are likely to be able to obtain redress; and
- (e) the deterrent effect of a disgorgement order on the respondents and other market participants.

These factors are not exhaustive; other factors to consider include those referred to in paragraph 21.

[53] Staff has the onus to prove on a balance of probabilities the amount obtained by a respondent as a result of his or her non-compliance with the Act. Subject to that onus, we agree that any risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose non-compliance with the Act gave rise to the uncertainty.

[54] In our view, no one should profit from his or her breach of the Act.

(iii) Conclusion as to Disgorgement

[55] The Commission has found in the Merits Decision that Limelight, Da Silva, Campbell and Daniels contravened Ontario securities law (Merits Decision, *supra* at paras. 214-223). The Commission concluded that from April 2004 to May 2006, Limelight sold approximately 1.6 million Limelight shares to investors. As a result of these sales, Limelight received approximately \$2.75 million from investors. The Commission found that in doing so Limelight, Da Silva, Campbell and Daniels illegally traded without registration and engaged in illegal distributions of shares of Limelight. (Merits Decision, *supra* at paras. 208 -209)

[56] In the Merits Decision, the Commission held that Limelight and its salespersons were acting as market intermediaries without registration in breach of subsection 25(1) of the Act. Accordingly, all of the trading by the Respondents breached the registration provisions of the Act and all of the amounts obtained by the Respondents from investors were obtained as a result of non-compliance with the Act. The Merits Decision also referred to the Agreed Statement which stated that “the vast majority of Limelight investors are not accredited investors” (Merits Decision, *supra* at para. 144). The Merits Decision concluded that “the Respondents have not satisfied the onus on them to demonstrate that the accredited investor exemption or any other registration or prospectus exemption was available to them in connection with the trading in and distribution of Limelight sales” (Merits Decision, *supra* at para. 144).

[57] We note that none of the Respondents are registered under the Act.

[58] Da Silva was president of Limelight from April 5, 2004 until he resigned on April 17, 2006 and was a director of Limelight for all the periods in question (Merits Decision, *supra* at para. 14). In the Agreed Statement, Da Silva admits to Limelight having raised \$2.75 million from investors as a result of trades that amounted to a breach of Ontario securities law. (Merits Decision, *supra* at para. 25)

[59] Da Silva and Campbell were the directing minds of Limelight; they were directly involved in breaches of the Act by Limelight and its salespersons (Merits Decision, *supra* at paras. 116 and 118) and they were aware of and authorized, permitted or acquiesced in all such breaches. Da Silva and Campbell were also the principal shareholders of Limelight. In our view, individuals should not be protected or sheltered from administrative sanctions by the fact that the illegal actions they orchestrated were carried out through a corporation which they directed and controlled. In this case, Limelight, Da Silva and Campbell acted in concert with a common purpose in breaching key provisions of the Act.

[60] We note that the misconduct by Limelight, Da Silva and Campbell involved obtaining very substantial amounts of money from vulnerable investors to whom misrepresentations were made. From the investors' perspective, they have likely lost all of their investment. In our view, a disgorgement order is particularly appropriate in such circumstances and is a powerful tool to deter others from similar misconduct. It is appropriate that a disgorgement order in these circumstances relate to the full amount obtained by Limelight, Da Silva and Campbell from investors.

[61] In our view, Limelight, Da Silva and Campbell should not be permitted to profit from their contraventions of Ontario securities law. It is in the public interest that they disgorge the full amount invested by investors in Limelight as a result of the contraventions of the Act by Limelight, Da Silva and Campbell.

[62] We therefore order that Limelight, Da Silva, and Campbell jointly disgorge \$2,747,089.45 to the Commission pursuant to paragraph 10 of subsection 127(1) of the Act for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act.

[63] In making that order, we understand that no other Canadian securities regulator or court has ordered disgorgement from Limelight, Da Silva or Campbell as a result of the circumstances before us. If they had, we would have taken such an order or orders into account in making our disgorgement order. We recognize that it would be unfair and inconsistent with the principles underlying the disgorgement remedy for the aggregate amount ordered to be disgorged by Canadian securities regulators or courts to exceed the amounts obtained by Limelight, Da Silva and Campbell from investors.

4. Administrative Penalty

(i) Staff's Submissions

[64] Staff requested the following administrative penalties be imposed on the Respondents as a result of their breaches of the Act:

- (a) that Limelight, Da Silva, and Campbell each pay an administrative penalty of \$200,000 for failing to comply with Ontario securities law; and
- (b) that Daniels pay an administrative penalty of \$50,000 for failing to comply with Ontario securities law.

Staff indicated that the lower administrative penalty requested in respect of Daniels reflected his more limited role as a salesperson of Limelight.

[65] Staff referred us to the administrative penalties ordered in the NBSC Limelight Decision and the ASC Limelight Decision, which resulted from some of the same conduct of the Respondents that is before us. The NBSC imposed administrative penalties of \$100,000

against each of Da Silva and Limelight and \$150,000 against Campbell. The ASC imposed administrative penalties of \$100,000 and \$75,000 against Da Silva and Campbell, respectively.

[66] Staff submitted that the fact that administrative penalties were ordered by the NBSC and the ASC should not reduce the administrative penalties that should be imposed by the Commission. Staff submitted that the Respondents were aware of the multi-jurisdictional nature of securities regulation in Canada and thus ought to have known that each jurisdiction would separately exercise their protective and preventative mandates.

(ii) Purpose of Administrative Penalties

[67] The purpose of an administrative penalty is to deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets.

(iii) Applying the Administrative Penalty Provision

[68] The Commission's findings against the Respondents in the Merits Decision are summarized in paragraph 12.

[69] In the Merits Decision, the Commission concluded as follows:

From April 2004 to May 2006, Limelight, Da Silva and Campbell sold approximately 1.6 million Limelight shares to investors. As a result of these sales, Limelight raised approximately \$2.75 million from investors in all ten provinces of Canada and outside Canada. It is clear that the Respondents were acting in concert with a common purpose in making these sales of Limelight shares to investors. In carrying out that common purpose, they preyed on investors with limited resources and financial experience and breached key provisions of the Act intended to protect those investors. The investors appear to have lost their entire investments. (Merits Decision, *supra* at para. 208)

[70] We note that paragraph 9 of subsection 127(1) of the Act provides for a maximum administrative penalty for each contravention of the Act of \$1 million.

[71] The misconduct by each of the Respondents in this matter involved numerous serious breaches of the Act over a period of approximately two years. As noted above, we are legally entitled to impose an administrative penalty of up to \$1 million in connection with each breach of the Act. In our view, as a matter of principle, a respondent that commits multiple breaches of the Act should know that continuing and multiple breaches of the Act will have consequences in terms of the sanctions ultimately imposed. At the same time, however, in

imposing an administrative penalty, the Commission must consider the level of administrative penalties imposed in other similar cases.

[72] The administrative penalty we impose in this case relates to breaches of the Act by the Respondents in Ontario. The Respondents are at risk of administrative sanctions in any jurisdiction in which they contravene relevant securities laws. In this case, the Respondents operated from Ontario and illegally distributed securities to Ontario investors as well as to investors in other provinces. Acts in furtherance of such trading occurred in Ontario even when shares were ultimately sold to investors outside Ontario. In addition to protecting Ontario investors and maintaining the integrity of the Ontario capital markets, we have a public interest in ensuring that participants in Ontario capital markets do not illegally distribute securities to investors in other provinces or to investors outside Canada. The administrative penalties we impose in this matter relate to trading and acts in furtherance of trading that occurred in Ontario.

[73] In our view, the fact that administrative penalties were imposed in other jurisdictions for breach of the securities laws of those jurisdictions should not limit our discretion in this case to impose appropriate administrative penalties under the Act.

[74] In imposing administrative penalties on the Respondents, we also consider it essential that market participants know that if they make misrepresentations to Staff of the Commission in their investigation or breach a Commission cease trade or other order, they do so at their peril.

(iv) Conclusion as to Administrative Penalties

[75] We order that a \$200,000 administrative penalty be imposed upon each of Limelight and Da Silva. We determined that amount by reflecting the following allocation:

- (a) \$75,000 for breaching subsections 25(1) and 53(1) of the Act;
- (b) \$50,000 for making illegal and misleading representations to investors;
- (c) \$50,000 for breaching the Commission's cease trade orders; and
- (d) \$25,000 for making misrepresentations to and misleading the Staff of the Commission and for filing misleading forms with the Commission.

[76] We order that a \$175,000 administrative penalty be imposed upon Campbell. We have determined that amount by reflecting the allocation in clauses (a) to (c) of paragraph 75.

[77] In our view, in the circumstances, administrative penalties in the aggregate amounts referred to paragraphs 75 and 76 are appropriate and in accordance with the public interest.

Those amounts have been determined in part by reference to other decisions in similar circumstances.

[78] But for our decision to order disgorgement in this matter, we would have considered an administrative penalty of \$175,000 to \$200,000 to be inadequate in light of the serious nature of the misconduct that occurred here and the serious harm done to investors. In our view, previous decisions with respect to the amount of the administrative penalties imposed for conduct such as that before us are not adequate, particularly where repeated violations of key provisions of the Act occur or where large amounts of money are raised from investors. Where multiple violations of the Act occur, in our view, substantial administrative penalties should be ordered with respect to more than one or two of such contraventions, as permitted by paragraph 9 of subsection 127(1) of the Act. An administrative penalty imposed must be more than a mere “cost of doing business” for those intent on breaching the provisions of the Act. In our view, the disgorgement order and the orders with respect to administrative penalties that we make in this matter are appropriate in the circumstances.

[79] We also order that a \$50,000 administrative penalty be imposed upon Daniels for his breaches of the Act. We conclude that administrative penalty is appropriate in the circumstances and in accordance with the public interest.

B. Costs

[80] Staff submitted that the Respondents should be ordered pursuant to section 127.1 of the Act to jointly and severally pay costs in the amount of \$154,979.79 plus \$5,637.29 in disbursements to indemnify the Commission for its investigation and hearing costs in this matter.

[81] According to Staff, the costs claimed in this case are reasonable and conservative and relate only to the time of the lead litigator and investigator. No costs were sought in respect of the time of other investigators, legal counsel, clerks or assistants. Further, Staff indicated that costs are being sought only for expenses incurred up to October 2007. No award is being sought for costs incurred to prepare for and attend at the sanctions hearing.

[82] To support its claim for costs, Staff provided information specifying the hours worked by Staff employees on this matter.

[83] We have concluded that it is appropriate to impose costs in this matter because it was the illegal conduct of Limelight, Da Silva, Campbell and Daniels that gave rise to this proceeding.

[84] Based on the submissions and information presented by Staff, we assess the total costs payable by Limelight and Campbell at \$114,979.79 plus \$5,637.29 in disbursements. We order that they are jointly and severally responsible for the costs and disbursements payable.

[85] The Agreed Statement entered into by Da Silva saved substantial hearing time and substantially assisted in proving Staff's case against all of the Respondents. Accordingly, we order Da Silva to pay a lower amount of costs of \$15,000 and no disbursements.

[86] We also order that Daniels pay costs of \$25,000 and no disbursements. We have ordered reduced costs against Daniels because, while he breached the Act, he appears to have had a more limited involvement in illegally selling securities to investors.

VI. ORDER

[87] For the reasons discussed above, we have concluded that the sanctions and costs imposed by us are in the public interest and are proportionate to the circumstances of this matter. Accordingly, we order that:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, Limelight, Da Silva and Campbell shall cease trading in securities permanently, with the exception that each of Da Silva and Campbell are permitted to trade securities for the account of his registered retirement savings plans (as defined in the *Tax Act*) in which he and/or his spouse have sole legal and beneficial ownership, provided that:
 - (i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;
 - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
 - (iii) he carries out any permitted trading through a registered dealer and through accounts opened in his name only and he must close any accounts that are not in his name only;
- (b) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Limelight, Da Silva and Campbell permanently, except for any exemptions necessary to allow the trading in securities permitted in paragraph (a) above;
- (c) pursuant to paragraph 2 of subsection 127(1) of the Act, Daniels shall cease trading in securities for 10 years, with the exception that Daniels is permitted to trade securities for the account of his registered retirement savings plans (as defined in the *Tax Act*) in which he and/or his spouse have sole legal and beneficial ownership, provided that:

- (i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;
 - (ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
 - (iii) he carries out any permitted trading through a registered dealer and through accounts opened in his name only and he must close any accounts that are not in his name only;
- (d) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Daniels for 10 years, except for any exemptions necessary to allow the trading in securities in the manner permitted in paragraph (c) above;
- (e) pursuant to paragraph 8 of subsection 127(1) of the Act, Da Silva and Campbell are prohibited permanently from becoming or acting as a director or officer of any issuer;
- (f) pursuant to subsection 37(1) of the Act, Limelight, Da Silva, Campbell and Daniels are permanently prohibited from telephoning residences within or outside Ontario for the purpose of trading in securities;
- (g) pursuant to paragraph 10 of subsection 127(1) of the Act, Limelight, Da Silva and Campbell shall jointly disgorge to the Commission \$2,747,089.45 to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;
- (h) pursuant to paragraph 9 of subsection 127(1) of the Act, each of Limelight and Da Silva shall pay an administrative penalty of \$200,000, to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;
- (i) pursuant to paragraph 9 of subsection 127(1) of the Act, Campbell shall pay an administrative penalty of \$175,000 to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;
- (j) pursuant to paragraph 9 of subsection 127(1) of the Act, Daniels shall pay an administrative penalty of \$50,000 to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act; and
- (k) pursuant to subsection 127.1 of the Act,

- (i) Limelight and Campbell shall jointly and severally pay the costs of Staff's investigation and this proceeding in the amount of \$114,979.79 plus \$5,637.29 in disbursements; and
- (ii) Da Silva shall pay the costs of Staff's investigation and this proceeding in the amount of \$15,000; and
- (iii) Daniels shall pay the costs of Staff's investigation and this proceeding in the amount of \$25,000.

Dated this 10th day of December, 2008

"James E. A. Turner"

James E. A. Turner

"Suresh Thakrar"

Suresh Thakrar