



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

AND

**IN THE MATTER OF
SULJA BROS. BUILDING SUPPLIES, LTD., PETAR VUCICEVICH,
KORE INTERNATIONAL MANAGEMENT INC., ANDREW DEVRIES,
STEVEN SULJA, PRANAB SHAH, TRACEY BANUMAS and SAM SULJA**

REASONS AND DECISION

**Relating to Sulja Bros. Building Supplies, Ltd., Kore International Management Inc. and
Andrew DeVries**

Hearing: September 24 and 29, 2010

Decision: May 25, 2011

Panel: Patrick J. LeSage, Q.C. - Commissioner and Chair of the Panel
Sinan O. Akdeniz - Commissioner

Appearances: Jonathon Feasby - For Staff of the Ontario Securities
Usman M. Sheikh Commission

- No one appeared for any of the Respondents for
which these Reasons apply

TABLE OF CONTENTS

I. BACKGROUND	1
A. History of the Proceeding	1
B. The Contested Proceeding Respondents	1
C. The Non-Contesting Respondents	2
D. The Allegations	2
II. ISSUES	3
III. EVIDENCE AND FINDINGS	4
A. The Evidence	4
B. Summary of Findings	5
1. Other Relevant Companies	6
2. The Investment Scheme	6
(a) Misleading Press Releases	6
(b) Sale of Sulja Nevada shares	9
(c) Tracing of Profits	10
IV. ANALYSIS	11
A. Did DeVries engage in unregistered trading, contrary to subsection 25(1)(a) of the Act? .	11
1. The Law	11
2. Analysis	12
B. Did DeVries engage in an illegal distribution, contrary to subsection 53(1) of the Act?	13
1. The Law	13
2. Analysis	13
C. Did DeVries engage in conduct relating to Sulja Nevada securities that perpetrated a fraud, contrary to subsection 126.1(b) of the Act?	14
1. The Law	14
2. Analysis	15
D. Did Kore Canada engage in market manipulation in respect of shares of Sulja Nevada, contrary to subsection 126.1(a) of the Act?	16
1. The Law	16
2. Analysis	16
E. Did Sulja Nevada make statements in press releases of Sulja Nevada which were misleading and untrue, contrary to subsection 126.2(1) of the Act?	17
1. The Law	17
2. Analysis	17
V. CONCLUSION	17

REASONS AND DECISION

I. BACKGROUND

A. History of the Proceeding

[1] This was a hearing before the Ontario Securities Commission (the “**Commission**”) pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”), to consider whether Sulja Bros. Building Supplies, Ltd., (Nevada) (“**Sulja Nevada**”), Kore International Management Inc. (“**Kore Canada**”) and Andrew DeVries (“**DeVries**”) breached the Act and acted contrary to the public interest.

[2] The proceeding on the merits was commenced by a Statement of Allegations and a Notice of Hearing dated December 27, 2006 with respect to Sulja Nevada, Sulja Bros. Building Supplies Ltd. (Ontario) (“**Sulja Ontario**”), Kore Canada, Petar Vucicevich (“**Vucicevich**”) and DeVries. An Amended Statement of Allegations and a second Notice of Hearing were issued on June 16, 2008 to remove Sulja Ontario as a respondent and to add Steven Sulja, Pranab Shah (“**Shah**”), Tracey Banumas (“**Banumas**”) and Sam Sulja as respondents. Sulja Nevada, Vucicevich, Kore Canada, DeVries, Steven Sulja, Shah, Banumas and Sam Sulja are collectively referred to as the “**Respondents**”.

[3] Vucicevich, Steven Sulja, Shah, Banumas and Sam Sulja did not contest the allegations brought by Staff of the Commission (“**Staff**”). These Respondents, who had their allegations dealt with on September 13, 14 and 24, 2010, are collectively referred to as the “**Non-Contesting Respondents**”. Our reasons and decisions with respect to the Non-Contesting Respondents were issued on October 28, 2010 (*Re Sulja Bros. Building Supplies, Ltd.* (2010), 33 O.S.C.B. 10173 (the “**Vucicevich Merits Reasons**”) and *Re Sulja Bros. Building Supplies, Ltd.* (2010), 33 O.S.C.B. 10180 (the “**Sulja Merits Reasons**”)).

[4] The hearing relating to the remaining respondents, Sulja Nevada, Kore Canada, and DeVries, proceeded in the normal course on September 24, 2010 (the “**Contested Proceeding Respondents**”). None of Sulja Nevada, Kore Canada or DeVries, although properly served with notice of the proceeding, attended by counsel, agent, or in person. The hearing concluded on September 29, 2010, when we gave an oral ruling making summary findings against the Contested Proceeding Respondents with the understanding that more complete reasons would follow. These are those reasons.

B. The Contested Proceeding Respondents

Sulja Nevada

[5] Sulja Nevada was incorporated in the State of Nevada, U.S.A. on April 19, 2005. It was originally incorporated as Loftworks Inc. and, following a series of name changes (to Loftwerks Inc. and then to Sulja Brothers Building Products, Ltd.), ultimately changed its name to Sulja Bros. Building Supplies, Ltd. on July 21, 2006. For ease of reference, the company will be referred to as Sulja Nevada in these reasons.

[6] Sulja Nevada was quoted on the Pink OTC Markets Inc. (“**Pink Sheets**”), an over-the-counter quotation system in the United States.

Kore Canada

[7] Kore Canada was incorporated in Ontario with a registered office at 490 Pelissier Street in Windsor, Ontario.

DeVries

[8] DeVries is a resident of Texas, U.S.A.

C. The Non-Contesting Respondents

Vucicevich

[9] Vucicevich is a resident of Colchester, Ontario. He was the sole director of Kore Canada.

Steven Sulja

[10] Steven Sulja is a resident of Oldcastle, Ontario. He was the sole director of Sulja Nevada.

Shah

[11] Shah is a resident of Ontario. He was an employee of Kore Canada.

Banumas

[12] Banumas is a resident of Ontario. She was an employee of Kore Canada.

Sam Sulja

[13] Sam Sulja is a resident of McGregor, Ontario. He and Steven Sulja are brothers.

D. The Allegations

[14] Staff makes the following allegations against Sulja Nevada, Kore Canada and DeVries:

- (a) Between February 6, 2006 and January 31, 2007, Kore Canada and DeVries, directly or indirectly, engaged or participated in an act, practice or course of conduct relating to the securities of Sulja Nevada that they knew or reasonably ought to have known resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, the securities of Sulja Nevada contrary to subsection 126.1(a) of the Act;
- (b) Between February 6, 2006 and January 31, 2007, DeVries traded securities of Sulja Nevada that was a distribution of securities without a preliminary prospectus and prospectus having been filed and receipts

- having been issued for them by the Director and without an exemption from the prospectus requirement contrary to subsection 53(1) of the Act;
- (c) Between February 6, 2006 and January 31, 2007, DeVries traded securities of Sulja Nevada while not registered in accordance with Ontario securities law to trade securities contrary to section 25 of the Act;
 - (d) Between February 6, 2006 and January 31, 2007, DeVries, directly or indirectly, engaged in or participated in an act, practice or course of conduct relating to Sulja Nevada securities that he knew or reasonably ought to have known perpetrated a fraud on other persons or companies contrary to subsection 126.1(b) of the Act;
 - (e) Between February 6, 2006 and January 31, 2007, Sulja Nevada and DeVries made statements in the press releases of Sulja Nevada that they knew or reasonably ought to have known in a material respect and at the time and in light of all the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading and would reasonably be expected to have a significant effect on the market price or value of Sulja Nevada securities contrary to subsection 126.2(1) of the Act;
 - (f) Between February 6, 2006 and January 31, 2007, Sulja Nevada and DeVries made statements in press releases being documents required to be furnished under Ontario securities law that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading contrary to subsection 122(1)(b) of the Act; and
 - (g) The conduct of the Contested Proceeding Respondents contravened Ontario securities law and is contrary to the public interest.

II. ISSUES

[15] To avoid duplicative findings, in accordance with the principle enunciated in *R. v. Kienapple*, [1975] 1 S.C.R. 729, Staff made submissions on the findings they requested which narrowed the scope of the issues to the following:

1. Did DeVries engage in unregistered trading, contrary to subsection 25(1)(a) of the Act?
2. Did DeVries engage in an illegal distribution, contrary to subsection 53(1) of the Act?
3. Did DeVries engage in conduct relating to Sulja Nevada securities which had perpetrated a fraud, contrary to subsection 126.1(b) of the Act?

4. Did Kore Canada engage in market manipulation in respect of Sulja Nevada securities, contrary to subsection 126.1(a) of the Act?
5. Did Sulja Nevada make statements in press releases of Sulja Nevada which were misleading or untrue, contrary to subsection 126.2(1) of the Act?

III. EVIDENCE AND FINDINGS

A. The Evidence

[16] At the outset of the hearing, Staff tendered exhibits which consist of 35 volumes of documentary evidence. In an effort to expedite the hearing process, Staff reduced the evidence to two volumes of documents entitled “Compendium of Key Documents” and “Compendium of Admissions and Evidence Summaries”. This procedure was followed with the Panel’s acquiescence, indeed encouragement, relying on subsection 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the “SPPA”):

[17] Subsection 15(1) of the SPPA provides that:

15(1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[18] The Compendium of Key Documents, as its name suggests, consists of a selection of key documents from the exhibits and summaries of key documents which are supported by the exhibits. The documentary evidence in this compendium includes:

- Summaries of corporate and registration documents;
- Summaries of the press releases issued by Sulja Nevada;
- Trading analysis showing the quantity of Sulja Nevada shares issued to nominee trading accounts (the “**Nominee Accounts**”) on various dates, Sulja Nevada shares purchased or sold in the market through the Nominee Accounts on various trading dates and the trading profits realized on each of those trading dates (the “**Trading Analysis**”). Staff conducted the Trading Analysis based on various sources, including: (i) documents from Sulja Nevada’s transfer agent, Transfer Online, Inc., located in Portland, Oregon (“**Transfer Online**”); (ii) Pink Sheets data, which is data from the market on which Sulja Nevada traded; it contains the open, high, low, close prices and daily volumes in summary form; (iii) Selectr data, which is brokerage firm data of Canadian investors who have traded in Sulja Nevada shares; and (iv) Blue Sheets data, which is brokerage firm data of investors in the United States who have traded in Sulja Nevada shares; and

- Tracing analysis based on banking records and information on trust accounts held by Armeland & Associates, a law firm described in paragraph 31 below (the “**Tracing Analysis**”).

[19] The Compendium of Admissions and Evidence Summaries contains transcript excerpts from both compelled and voluntary interviews of the Respondents and other related individuals which are reproduced in the exhibits. In particular, we note that Vucicevich and DeVries were voluntarily interviewed together by Staff on November 26, 2006 (the “**Voluntary Examination**”). Excerpts from that interview are reproduced in the Compendium of Admissions and Evidence Summaries.

[20] The Panel admitted the compendia as evidence in that form. In doing so, the Panel was mindful that the compendia contain hearsay evidence. The admission of the compendia is subject to the weight to be given to that evidence.

[21] Staff also called two witnesses at the hearing. Tom Anderson, a senior Staff investigator, testified at length as to the accuracy and truthfulness of the press releases issued by Sulja Nevada and the use to which trading profits were put. Mehran Shahviri, a Staff investigator in the Market Specialist Unit of the Enforcement Branch, gave extensive evidence about the issuance, trading and price movement of Sulja Nevada shares.

[22] Sulja Nevada, Kore Canada and DeVries did not attend the hearing and did not call any evidence.

B. Summary of Findings

[23] This matter arose out of what Staff alleges to be a “pump and dump” scheme between February 6, 2006 and January 31, 2007 (the “**Material Time**”). A “pump and dump” scheme is a fraudulent behaviour where promoters artificially inflate a stock’s price by making false claims about the company. This case involves false claims issued by way of press releases by and about Sulja Nevada. During the Material time, Sulja Nevada issued a large number of press releases, many of which DeVries participated in issuing. They announced, among other things, an imminent merger between Sulja Nevada and various companies, huge sales of cement that would generate multi-million dollar revenues for Sulja Nevada, Sulja Nevada’s financial statements and audit arrangements, as well as deals and events that would have a dramatic input on the company’s revenue potential. Many of the positive statements found in the press releases were gross exaggerations or just plain false.

[24] Meanwhile, DeVries would issue shares from Sulja Nevada’s treasury to Nominee Accounts, including a Nominee Account in the name of DeVries and Nominee Accounts controlled by Kore Canada. The Nominee Accounts would in turn sell Sulja Nevada shares in the market at prices inflated by the misrepresentations in the press releases. The use of nominee trading accounts in this case created an appearance of public activity coming from different sources and volume in the market, concealing the true beneficial ownership in Sulja Nevada shares.

[25] The Respondents' trading activity resulted in a profit of approximately US \$5.6 million. Of that US \$5.6 million, just over CDN \$3 million and US \$400,000 could be traced to Kore Canada and trust accounts held for the benefit of Vucicevich. Vucicevich was the sole director and officer of Kore Canada.

1. Other Relevant Companies

[26] While not named as respondents, a number of companies connected to this alleged "pump and dump" scheme are discussed in evidence.

Sulja Ontario

[27] Sulja Ontario was incorporated in Ontario on March 13, 1987. Its registered office is in Harrow, Ontario.

Kore US

[28] Kore International Management, Inc. ("**Kore US**") was incorporated in the State of Nevada on April 28, 2006. Before the revocation of its corporate status, Vucicevich served as its president, Mark Triesch served as its director and DeVries served as its treasurer and secretary.

Consultech US

[29] Consultech Construction Management, Inc. ("**Consultech US**") was incorporated in the State of Michigan, U.S.A. on December 13, 2002 by Vucicevich and Hedley John Coates.

Sulja Acquisition

[30] Sulja Bros. Acquisition Corp. ("**Sulja Acquisition**") was incorporated in the State of Nevada on May 19, 2006. The company went into default on July 1, 2006 and its corporate status was revoked on June 1, 2007. Steven Sulja is listed as its sole director.

Armeland

[31] Armeland & Associates ("**Armeland**") is a law firm in Windsor, Ontario.

2. The Investment Scheme

(a) Misleading Press Releases

[32] Sulja Nevada promoted its shares through the issuance of false or misleading press releases. During the Material Time, Sulja Nevada widely disseminated 96 press releases to the public through Marketwire, a leading newswire service. Staff led evidence that Sulja Nevada's press releases contained false or misleading statements about: (i) Sulja Nevada's imminent merger with various companies; (ii) cement deals that would generate multi-millions of dollars in sales and profits for Sulja Nevada; (iii) Sulja Nevada's positive financial statements and audit arrangements; and (iv) deals and events that would have a positive impact on the company's revenue potential. These press releases were substantially and materially false.

Merger between Sulja Nevada, Consultech and Sulja Ontario

[33] From February 6, 2006 to July 28, 2006, Sulja Nevada issued 42 press releases claiming it would merge with Sulja Ontario and subsequently with Consultech US. These press releases served to highlight the merger's revenue potential and to update the investors on the progress of the merger.

[34] The press releases during this period featured repeatedly and prominently that the merger would generate considerable revenues and other benefits for Sulja Nevada:

- On March 3, 2006, Sulja Nevada announced that its revenues would “top out at the \$200M+ within twenty-four months” and that the “increased inventory alone could place the company's assets at over \$125M”. This statement was reiterated in a number of subsequent press releases, including those dated March 6, 9 and 13, 2006;
- On March 13, 2006, Sulja Nevada claimed that it was contemplating a regular quarterly dividend of US \$0.0025; and
- On April 4 2006, Sulja Nevada announced that revenue projections for Sulja Nevada “should exceed \$50 Million for the first twelve-month period following the completion of the merger”.

[35] The press releases disclosed merger information throughout this period advising investors that the merger was well underway, on the cusp of completion, and ultimately, finalized:

- On March 6, 2006, Sulja Nevada vowed “Aggressive Strides to Complete Sulja Merger and Achieve Shareholder Confidence”;
- On March 13, 2006, Sulja Nevada announced that “its merger with [Sulja Ontario]...has accelerated its proposed timeline. Merger completion is expected to occur before March 24, 2006”, and its merger with Consultech would follow soon after. The date of March 24, 2006 as the completion date of the merger was repeated in two subsequent press releases dated March 17 and 21, 2006, emphasizing the imminent nature of the merger arrangement;
- On April 28, 2006, Sulja Nevada claimed that all pertinent documents related to its merger with Sulja Ontario had been executed and the merger process had been finalized; and
- On July 28, 2006, Sulja Nevada announced the completion of the merger and the creation of a post-merger entity: “The name of the Company has been changed from Loftwerks to SULJA BROS BUILDING SUPPLY, LTD”.

[36] All of these statements were false. There is no evidence to support that Sulja Nevada merged with any other entities. Although Staff received three merger agreements during its investigation, these agreements are either unsigned or incomplete. They are

insufficient to support the execution of a merger. Even if a merger had occurred, it would have done little or nothing to enhance the business potential of the merged entities.

[37] We conclude that Sulja Nevada's press releases as they relate to the company's merger with Consultech and Sulja Ontario contained material false and misleading statements.

Cement Contract

[38] The evidence discloses that, after announcing the conclusion of its merger, Sulja Nevada proceeded to issue press releases about various business opportunities. These included a purported cement deal with Ramada General Contracting ("**Ramada**") which Sulja Nevada claimed would generate large revenues for the company (the "**Cement Contract**"). On September 5, 2006, Sulja Nevada announced "the closing of the cement contract...with Ramada General Contracting in Abu Dhabi, UAE" in a press release (the "**September 5 Press Release**"). This press release further explained that:

- "The cement contract has been finalized, and the contract is officially closed. The contract is for seven million metric tons of cement per year. The cement will be transported to Abu Dhabi, UAE"; and
- "Ramada General Contracting is paying an average of USD \$50.00 per metric ton. This deal produces yearly revenues of USD \$350,000,000. The UAE currently faces a shortage in cement production. We are continuously looking to fill this need".

[39] On December 5, 2006, Sulja Nevada recanted this information (the "**December 5 Press Release**"), stating "in no uncertain terms" that the transaction had been "cancelled and no contract, even if drafted to finality, was consummated". In recanting this information, the December 5 Release explained that "the statements [made in the September 5 Press Release] were made honestly and from the most up-to-date information available at the time", but "circumstances far beyond the control of [Sulja Nevada]...now serve to have the company take pause and recant the information".

[40] The evidence is clear that there was never a contract for the sale of cement as set out in Sulja Nevada's September 5 Press Release. The December 5 Press Release resiling from the September 5 Release was in our view too little, too late. Even though there may have been some discussion of cement sales to Dubai, they were at best preliminary and did not reflect what the September 5 Press Release suggested as to volume or value. The statements in the September 5 Press Release were not honest nor do they reflect an honest mistake.

[41] We find Sulja Nevada's press releases as they relate to the Cement Contract contained material false and misleading statements.

Financial Statements and Audit Arrangements

[42] On July 31, 2006, Sulja Nevada issued a press release announcing "pertinent and positive financial information" for its fiscal year 2006. The press release stated that

“Year-end (fiscal) numbers will show revenues of \$63M+ for 2005 and gross profits of approximately \$28M+. The net profit for the year-end audit will surpass \$15M”.

[43] On August 3, 2006, Sulja Nevada announced the release of its financial statements on its website (the “**2006 Financials**”). The 2006 Financials reflected total revenue of US \$65 million, gross margin of US \$29 million and pre-tax profit of US \$26 million. Together with the 2006 Financials, the company released a “2007 Pro Forma” financial statement which projected total revenue of approximately US \$307 million, gross margin of US \$138 million and pre-tax profit of more than US \$93 million.

[44] The press releases noted that these financial statements were audited by “a premier international accounting firm”. For example, a press release dated August 23, 2006 stated that the company’s financial statements were being audited by KPMG and PricewaterhouseCoopers: “We are pleased to update our shareholders of the asset and audit progress. KPMG and Price Waterhouse Coopers will complete the audit and the assets are contained in the upcoming audited financials”.

[45] In fact, neither KPMG nor PWC had any involvement with Sulja Nevada. Both accounting firms issued cease-and-desist letters after learning of Sulja Nevada’s misrepresentations.

[46] We find that Sulja Nevada’s press releases relating to the company’s financial statements and that those financial statements were prepared or audited by KPMG or PWC were totally false and misleading statements.

Other Deals and Events

[47] Sulja Nevada issued over 60 statements in press releases announcing deals and events which would purportedly generate considerable revenues for Sulja Nevada. These included construction of a lumber distribution center in Detroit and building conversion projects in Ontario and Mississippi. The company also advised of its intention to be listed on OTCBB or NASDAQ.

[48] No evidence has been uncovered to support the reality of these undertakings and events.

[49] We find that Sulja Nevada’s press releases about these deals and events contained material false and misleading statements.

(b) Sale of Sulja Nevada shares

[50] During the Material Time, Sulja Nevada issued 589,400,000 shares from its treasury through its transfer agent, Transfer Online. In all instances, the treasury share issuances were authorized by DeVries.

[51] The vast majority of these shares were issued to the Nominee Accounts. Staff identified twelve Nominee Accounts in this scheme, of which eight were in Canada and four were in the United States. These accounts were in the names of the Respondents who were nominees (the “**Respondent Nominees**”) and additional individuals who are not

respondents to the proceeding but have admitted to be nominees (the “**Non-Respondent Nominees**”). They are: DeVries, Shah, Banumas, Sam Sulja, John Sulja, Vladko Sulja, Ayman Haddad, Chad Curtis, Jerry Couvillon, Kamal Ghandour, Mark Triesch, and Kore US. The Respondent Nominees and the Non-Respondent Nominees are collectively referred to as the “**Control Group**”.

[52] Based on information provided by Transfer Online, of the 589,400,000 shares issued from Sulja Nevada’s treasury during the Material Time, 227,000,000 shares were issued to the Respondent Nominees and 254,500,000 shares were issued to the Non-Respondent Nominees. In total, 481,500,000 shares, more than 81% of the total issue, were issued to the Control Group.

[53] The Control Group sold almost all of the Sulja Nevada shares they received to the market through the Nominee Accounts. Staff provided a Trading Analysis of Sulja Nevada shares based on brokerage firm client data of investors who have traded in Sulja Nevada shares. The Trading Analysis shows the quantity of Sulja Nevada shares that were purchased or sold by the Nominee Accounts during the Material Time and the trading profits realized on each of the trading dates:

- The Respondent Nominees sold 164,515,212 Sulja Nevada shares and purchased 27,892,344 shares. They received a trading profit of US \$5,628,559;
- The Non-Respondent Nominees sold 237,659,170 Sulja Nevada shares and purchased 109,449,006 shares. They received a trading profit of US \$11,161,428; and
- As a whole, the Control Group sold 402,174,382 Sulja Nevada shares and purchased 137,341,350 shares. They received a total profit of US \$16,789,987.

[54] We generally accept Staff’s Trading Analysis of the number of Sulja Nevada shares purchased and sold as well as the profits received during the Material Time.

(c) Tracing of Profits

[55] The Respondents received a trading profit of approximately US \$5.6 million as a result of this scheme.

[56] Staff conducted a Tracing Analysis based on bank account statements and information on trust accounts held by Armeland for the benefit of Vucicevich (the “**Armeland Trust Accounts**”). The Tracing Analysis shows that of the US \$5.6 million raised by the Respondents, CDN \$1,978,231 and US \$407,500 could be traced directly to Kore Canada and CDN \$1,098,000 could be traced to the Armeland Trust Accounts.

[57] The trading profits that were sent to the Armeland Trust Accounts could be directly traced to at least sixteen property purchases from June 8 to November 10, 2006 by Vucicevich, Tammy Vucicevich (Vucicevich’s then wife) and Colchester Development Group (a corporation controlled by Vucicevich). The total purchase price for these properties was CDN \$2,364,000.

[58] Many of the properties were purchased purportedly for the purpose of building a commercial development for Colchester Village. A newspaper article, quoting Vucicevich, describes this proposed center as consisting of a boxing gym, stores, shops, and a bed-and-breakfast style accommodation. All were to be constructed in an architectural theme based on Vienna's city center.

IV. ANALYSIS

A. Did DeVries engage in unregistered trading, contrary to subsection 25(1)(a) of the Act?

1. The Law

[59] Subsection 25(1)(a) of the Act sets out the registration requirement for trading in securities:

25(1) Registration for trading – No person or company shall,

(a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

...

and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[60] The definition of "trade" or "trading" in subsection 1(1) of the Act is:

"trade" or "trading" includes,

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

...

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

2. Analysis

[61] Staff's Trading Analysis, which we accept, establishes that 589,400,000 Sulja Nevada shares were issued from the Sulja Nevada treasury during the Material Time. In all cases, DeVries authorized the issuance of Sulja Nevada's treasury shares. Staff's Trading Analysis and a series of email correspondence in evidence containing treasury directions given by DeVries to Transfer Online describe the issuance of treasury shares to brokerage accounts in the names of Shah, Banumas, Sam Sulja, John Sulja and other members of the Control Group.

[62] In the Voluntary Examination, Vucicevich and DeVries admitted to having arranged for the transfer of these treasury shares to Nominee Accounts to be sold into the market. We accept Staff's Trading Analysis which shows that DeVries issued 481,500,000 shares, more than 81% of the total issue, to Nominee Accounts held by the Control Group to be sold to the market. Of those 481,500,000 shares, 227,000,000 shares were issued to the Respondent Nominees and 254,500,000 shares were issued to the Non-Respondent Nominees.

[63] The Control Group, by having sold 402,174,382 Sulja Nevada shares and purchased 137,341,350 shares, created an illusion of an active market and what appeared to be a profit of more than US \$16 million. The Respondent Nominees, a subset of the Control Group, sold 164,515,212 Sulja Nevada shares and purchased 27,892,344 shares; they obtained a profit of approximately US \$5.6 million. The Non-Respondent Nominees, the other subset of the Control Group, sold 237,659,170 Sulja Nevada shares and purchased 109,449,006 shares, netting a profit of approximately US \$11 million.

[64] As a Nominee Account holder, DeVries participated directly in the sale or disposition of Sulja Nevada shares described above. Of the 481,500,000 shares that he transferred to the Control Group, 74,000,000 shares were transferred to an account in his name. DeVries admitted in the Voluntary Examination that he held that account for the purpose of nominee trading. From August 1, 2006 to November 13, 2006, DeVries participated in nominee account trading; he sold a total of 27,285,964 Sulja Nevada shares and purchased 11,980,482 shares in the market. He obtained a profit of more than US \$1.3 million from his trading activities.

[65] DeVries also assisted in the promotion of Sulja Nevada shares. In the Voluntary Examination, he admitted that one of the roles he assumed in the investment scheme was to draft press releases.

[66] DeVries was not registered under the Act. There is no evidence of any available registration exemptions.

[67] This evidence is ample to establish on a balance of probabilities that DeVries engaged in trades or acts in furtherance of trades in relation to Sulja Nevada securities. As DeVries was not registered under the Act and there was no exemption available, we find that he engaged in unregistered trading, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

B. Did DeVries engage in an illegal distribution, contrary to subsection 53(1) of the Act?

1. The Law

[68] Subsection 53(1) of the Act sets out the prospectus requirement for a distribution of securities:

53(1) Prospectus required – No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director.

[69] The definition of a “distribution” in subsection 1(1) of the Act is:

“distribution”, where used in relation to trading in securities, means,

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

...

2. Analysis

[70] Sulja Nevada securities traded by DeVries were securities that were not previously issued. They were shares issued from the treasury of the company through its transfer agent, Transfer Online.

[71] Staff produced a section 139 certificate which discloses that Sulja Nevada:

1. is not and has never been a reporting issuer in Ontario;
2. has never filed a prospectus with the Commission;
3. has never delivered an offering memorandum to the Commission;
4. has never filed a Form 45-501F1 – Report of Exempt Distribution with the Commission; and
5. has never filed a Form 45-106F1 – Report of Exempt Distribution with the Commission.

[72] There is no evidence of any available prospectus exemptions.

[73] We find that DeVries traded previously unissued Sulja Nevada securities and thereby engaged in a “distribution” within the meaning of the Act. The distribution of Sulja Nevada securities was not qualified by a prospectus and there was no exemption available. We conclude that DeVries engaged in an illegal distribution, contrary to subsection 53(1) of the Act and contrary to the public interest.

C. Did DeVries engage in conduct relating to Sulja Nevada securities that perpetrated a fraud, contrary to subsection 126.1(b) of the Act?

1. The Law

[74] The basis for an allegation of fraud involving securities is found in subsection 126.1(b) of the Act. It states:

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

...

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

[75] The jurisprudence has established the elements of fraud under subsection 126.1(b) of the Act:

The act of fraud is established by proof of:

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

The mental element of fraud is established by proof of:

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

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

[76] The mental element of the fraud provision has been described by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, (2004), 192 B.C.A.C. 119 (leave to appeal to the Supreme Court of Canada denied). The fraud provision of the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418 has identical operative language as section 126.1 of the [Ontario] Act:

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

facts constituting the dishonest act, by someone involved in the transactions.
[emphasis in the original]

2. Analysis

[77] Although there is some evidence to suggest that DeVries knew or ought to have known that the press releases contained false and misleading information, it does not rise to the level of proof on a balance of probabilities. We are not satisfied he possessed the necessary element of knowingly issuing misleading press releases or that he reasonably ought to have known the press releases were misleading.

[78] However, we are satisfied that DeVries knowingly participated in this fraudulent scheme by reason of his involvement in the nominee account trading. He furthered the deceit and falsehood in this scheme by both arranging for the transfer of Sulja Nevada shares into Nominee Accounts to be sold into the market and personally participating in nominee trading. The evidence establishes that DeVries issued 481,500,000 Sulja Nevada shares to twelve Nominee Accounts, including 227,000,000 to the Respondent Nominees (of which 74,000,000 shares were transferred to a Nominee Account in his name) and 254,500,000 shares to the Non-Respondent Nominees. DeVries sold 27,285,964 shares and purchased 11,980,482 shares in a scheme in which the Respondent Nominees sold 164,515,212 shares and purchased 27,892,344 shares, and the Non-Respondent Nominees sold 237,659,170 shares and purchased 109,449,006 shares.

[79] In total, the Nominee Accounts controlled by the Control Group sold 402,174,382 Sulja Nevada shares and purchased 137,341,350 shares. We find that the volume of trading carried out through the Nominee Accounts was significant and concealed the beneficial ownership of Sulja Nevada shares.

[80] In the Voluntary Examination, DeVries demonstrated an awareness that he was part of a larger nominee trading scheme and detailed knowledge of the numbers involved. For example, he was able to identify the Nominee Account holders in the United States and provide Staff with a figure of US \$7.8 million as the profit raised from the scheme.

[81] Staff's Trading Analysis shows that the Respondents received a trading profit of US \$5.6 million during the Material Time. This trading profit was created by selling treasury shares in a market that was inflated by a large number of positive but false press releases issued by Vucicevich and DeVries. Vucicevich and DeVries profited from these sales. In particular, DeVries received a trading profit of more than US \$1.3 million.

[82] In summary, the fraudulent conduct by DeVries in this case was the use of Nominee Accounts to create a totally misleading appearance of trading activity in Sulja Nevada securities. This fraudulent conduct created a trading profit of approximately US \$5.6 million for the Respondents.

[83] We are satisfied it has been proven on a balance of probabilities that DeVries perpetrated a fraud, as above described, thereby contravening subsection 126.1(b) of the Act, contrary to the public interest.

D. Did Kore Canada engage in market manipulation in respect of shares of Sulja Nevada, contrary to subsection 126.1(a) of the Act?

1. The Law

[84] Subsection 126.1(a) is the market manipulation provision:

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

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or derivative of a security;

...

2. Analysis

[85] In the Vucicevich Merits Reasons, we found that Shah and Banumas held Nominee Accounts and traded Sulja Nevada shares at Vucicevich's behest. The evidence introduced by Staff at this hearing further reveals that Shah and Banumas carried out nominee trading in their capacity as Kore Canada employees.

[86] In the Voluntary Examination, Vucicevich confirmed that Shah and Banumas traded on behalf of Kore Canada as its employees:

PV: [Banumas and Shah] don't – not beneficial owners, and they are not – they don't profit one penny from this. They are simply employees....Okay? It's not like they can take 10 percent or anything like that. No, no.

DN: So what's in it for them to participate and open up the account?

PV: They're employees....They do what I tell them to do....My employees at Kore....I pay...them now to simply trade off these shares. They have no authority to send out press releases, they have no authority to do anything of the sort...Sell between these numbers, okay? Raise capital for Sulja Bros.

GA: Okay. So when the cash comes in from selling the [Sulja Nevada shares],...then they would give them back to...

PV: It gets given to Kore...

[87] Vucicevich's admissions are confirmed by trust agreements signed by Shah and Banumas. The trust agreements expressly set out that the Sulja Nevada shares traded by Shah and Banumas were provided by Kore Canada, were "100%" beneficially owned by Kore Canada and would be traded as directed by Kore Canada.

[88] During the Material Time, Transfer Online issued 46,000,000 and 54,000,000 Sulja Nevada treasury shares to Shah and Banumas respectively. Shah sold 39,500,084 Sulja Nevada shares and purchased 6,833,712 shares in the market, netting a profit of

approximately US \$1 million. Banumas sold 45,305,409 Sulja Nevada shares and purchased 3,144,480 shares in the market, netting a profit of more than US \$1.3 million. Staff's Tracing Analysis shows that any trading profits realized by Shah and Banumas were sent to Kore Canada.

[89] The Nominee Accounts created an appearance of public trading activity coming from different sources and volume in the market. Kore Canada's trading of Sulja Nevada shares through its employees' Nominee Accounts was of such a magnitude that the company knew or reasonably ought to have known would result in or contribute to a misleading appearance of trading activity in Sulja Nevada securities. We find that Kore Canada breached subsection 126.1(a) of the Act, contrary to the public interest.

E. Did Sulja Nevada make statements in press releases of Sulja Nevada which were misleading and untrue, contrary to subsection 126.2(1) of the Act?

1. The Law

[90] Subsection 126.2(1) is the basis for an allegation of misleading or untrue statements. It states:

126.2(1) Misleading or untrue statements – A person or company shall not make a statement that the person or company knows or reasonably ought to know,

(a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and

(b) would reasonably be expected to have a significant effect on the market price or value of a security.

2. Analysis

[91] We conclude that Sulja Nevada issued or caused to be issued misleading and false press releases during the Material Time. The press releases, which were overwhelmingly positive about the company's prospects, would reasonably be expected to have a significant effect on the market price or value of Sulja Nevada securities. Sulja Nevada knew or reasonably ought to have known that the press releases were misleading or untrue. For the reasons above, we find that Sulja Nevada breached subsection 126.2(1) of the Act, contrary to the public interest.

V. CONCLUSION

[92] For the reasons stated above, we find that:

1. DeVries traded Sulja Nevada securities without registration, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

2. DeVries distributed previously unissued Sulja Nevada securities without a prospectus, contrary to subsection 53(1) of the Act and contrary to the public interest;
3. DeVries engaged or participated in acts, practices or a course of conduct relating to Sulja Nevada securities that perpetrated a fraud, contrary to subsection 126.1(b) of the Act and contrary to the public interest;
4. Kore Canada engaged in acts, practices or a course of conduct relating to Sulja Nevada securities that it knew or reasonably ought to have known resulted in or contributed to a misleading appearance of trading activity in Sulja Nevada securities, contrary to subsection 126.1(a) of the Act and contrary to the public interest; and
5. Sulja Nevada issued statements in its press releases that it knew or reasonably ought to have known in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading and would reasonably be expected to have a significant effect on the market price or value of Sulja Nevada securities, contrary to subsection 126.2(1) of the Act and contrary to the public interest.

Dated at Toronto at this 25th day of May, 2011.

“Patrick J. LeSage”

“Sinan O. Akdeniz”

Patrick J. LeSage, Q.C.

Sinan O. Akdeniz