Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
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IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF INNOVATIVE GIFTING INC., TERENCE LUSHINGTON, Z2A CORP. AND CHRISTINE HEWITT

REASONS AND DECISION ON SANCTIONS AND COSTS
(Subsection 127(1) and section 127.1 of the Act)

Hearing:	October 23, 2013	
Decision:	January 30, 2014	
Panel:	James E. A. Turner	- Vice-Chair
Counsel:	Michelle Vaillancourt	- For Staff of the Commission

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REASONS FOR DECISION ON SANCTIONS AND COSTS

I. OVERVIEW

[1] This was a hearing (the "**Hearing**") before the Ontario Securities Commission (the "**Commission**") pursuant to subsection 127(1) and section 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 imposing sanctions against Z2A Corp. ("**Z2A**") and Christine Hewitt ("**Hewitt**").

[2] On March 2, 2010, Staff of the Commission ("**Staff**") issued a Notice of Hearing accompanied by a Statement of Allegations dated March 2, 2010 in respect of Innovative Gifting Inc. ("**IGI**"), Terence Lushington ("**Lushington**"), Z2A and Hewitt.

[3] On March 29, 2011, the Commission issued an order approving a settlement agreement between Staff and IGI and Lushington (the "**IGI Settlement Agreement**").

[4] A hearing on the merits with respect to the allegations against Hewitt and Z2A (the "**Respondents**") was held before the Commission on October 3, 4, 5, 6, 12 and 24, November 8 and December 21, 2011 (the "**Merits Hearing**"). Hewitt participated and was represented by legal counsel.

[5] On July 25, 2013, the Commission issued its Reasons and Decision with respect to the Merits Hearing.

[6] On August 27, 2013, a date for a hearing with respect to sanctions and costs (the "**Sanctions Hearing**") was scheduled for October 23, 2013. A schedule was also set for the submission of materials. The Commission encouraged Hewitt to retain legal counsel in advance of the Sanctions Hearing.

[7] On October 10, 2013, Hewitt wrote to the Secretary of the Commission and requested an extension of the Sanctions Hearing for the purpose of retaining legal counsel to make written submissions. In response, the Registrar of the Commission requested particulars from Hewitt regarding her attempts to retain legal counsel.

[8] On October 16, 2013, counsel for Hewitt by letter confirmed his retainer by Hewitt but did not request additional time to make written submissions.

[9] On October 17, 2013, the Commission informed Hewitt that she could make her request for an extension of the dates for the Sanctions Hearing at the outset of the Sanctions Hearing on October 23, 2013.

[10] Staff appeared on October 23, 2013 to make oral submissions and filed written submissions, a hearing brief and a brief of authorities. The Respondent did not appear and did not file any materials. The Panel was satisfied that Hewitt had been served with all of the relevant materials for the Sanctions Hearing. The Panel concluded that the sanctions and costs hearing should proceed as scheduled.

II. FINDINGS OF THE MERITS PANEL

[11] The panel on the Merits Hearing (the "**Merits Panel**") held that during the Material Time (defined in the Statement of Allegations as being September 2008 to January 2009), Z2A and Hewitt breached the Act as follows:

(a) Hewitt and Z2A engaged in acts in furtherance of trades in shares of RCT Global Networks Inc. ("**RCT**") without being registered to trade, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(b) Z2A's trades in RCT shares were trades in securities that were not previously issued and were therefore distributions. No preliminary prospectus or prospectus was filed and no receipt was issued in connection with these distributions; accordingly, those distributions breached subsection 53(1) of the Act and were contrary to the public interest; and

(c) As an officer and director of Z2A, Hewitt authorized, permitted and acquiesced in Z2A's breaches of Ontario securities law and therefore breached subsections 25(1)(a) and 53(1) of the Act and acted contrary to the public interest.

The IGI Program

[12] The findings of breaches of the Act and conduct contrary to the public interest by Hewitt and Z2A in this matter centered around their involvement in what was referred to as the "IGI Program".

[13] Under the IGI Program, investors/donors would contribute money to charities and receive in exchange shares of a company with a purported value of a multiple (six to eight times) of the value of the contribution to the charity; approximately $2.3 million was raised in this manner from donors.

[14] Donors were led to believe that the shares they were issued were provided by a "non-resident Swiss philanthropist".

[15] Donors had the choice of donating the shares received to the charity or keeping the shares, in which case, the donor would be required to hold the shares for a number of years. If the donor chose to donate the shares, the donor would receive a charitable receipt for the cash donation plus the purported value of the shares donated. In that case, for example, a person making a $1,000 cash donation to the charity would receive a charitable receipt for $7,000, representing the $1,000 cash donation and the $6,000 value of the shares donated.

[16] Peter Black, a representative of one of the participating charities, Furry World Rescue Mission ("**Furry World**"), testified that 90% of the cash donated to Furry World was paid to IGI. Once the donor cheques received by Furry World cleared, Furry World would make the payments to IGI.

[17] The shares that were donated as part of the IGI Program were shares in RCT, an Ontario corporation that became listed on the Frankfurt Stock Exchange in June 2008.

[18] The Panel found that Hewitt and Z2A with the assistance of Drew Reid ("**Reid**") provided the RCT shares that were issued to donors in the IGI Program and that they were compensated at a high rate for this role.

[19] Hewitt testified at the Merits Hearing that she began work with IGI in the first week of December 2008 and that the last transaction she worked on for IGI was during the first week of January 2009.

[20] The Panel found that Hewitt and Z2A paid Reid, through his company Mobiliare Argenti Ltd. ("**Mobiliare**"), for the RCT shares issued to donors in the IGI Program and that Reid was working under Hewitt's direction.

A. SANCTIONS SOUGHT

[21] Staff requests the following sanctions against the Respondents:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that Z2A and Hewitt cease trading in any securities for a period of five years;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Z2A and Hewitt be prohibited for a period of five years;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Z2A and Hewitt for a period of five years;

(d) pursuant to paragraph 6 of subsection 127(1) of the Act, that Z2A and Hewitt be reprimanded;

(e) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, that Hewitt resign one or more positions that she holds as a director or officer of any issuer, registrant or investment fund manager;

(f) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, that Z2A and Hewitt be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of five years;

(g) pursuant to paragraph 8.5 of subsection 127(1) of the Act, that Z2A and Hewitt be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of five years;

(h) pursuant to paragraph 9 of subsection 127(1) of the Act, that Z2A and Hewitt each be required to pay an administrative penalty of $15,000 for their failure to comply with Ontario securities law;

(i) pursuant to paragraph 10 of subsection 127(1) of the Act, that Z2A and Hewitt disgorge to the Commission, on a joint and several basis, $229,453.10, being the amounted obtained by them as a result of their non-compliance with Ontario securities law; and

(j) pursuant to subsections 127.1(1) and (2) of the Act, that Z2A and Hewitt be ordered to pay, on a joint and several basis, the costs of the Merits Hearing in the amount of $55,960.00.

B. SHOULD SANCTIONS BE IMPOSED?

[22] When exercising the Commission's public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

(a) to protect investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[23] In pursuing these purposes, I must have regard for the fundamental principles described in subsection 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act is restrictions on fraudulent and unfair market practices and procedures.

[24] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that when considering imposing sanctions, it should be remembered that "participation in the capital markets is a privilege and not a right" (*Erikson* v. *Ontario (Securities Commission),* [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[25] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

> … 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 section 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 doing so 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.

[26] I find that it is necessary to protect Ontario investors and the integrity of Ontario's capital markets to make a sanctions order against the Respondents in the public interest.

C. THE APPROPRIATE SANCTIONS

[27] In determining the nature and duration of the appropriate sanctions, I must consider the relevant facts and circumstances, including:

(a) the seriousness of the respondent's conduct and breaches of the Act;

(b) the respondent's experience and level of activity in the capital markets;

(c) the harm to investors;

(d) the benefits received by the respondents as a result of the improper activity;

(e) whether or not the sanctions imposed may serve to deter the respondents from engaging in similar abuses of the Ontario capital markets;

(f) the effect any sanctions may have on the ability of the respondents to participate without check in Ontario capital markets;

(g) any mitigating factors; and

(h) previous decisions made in similar circumstances.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 ("***Belteco***") at paras. 25 and 26.)

[28] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against the Respondents:

(a) Staff submit that the conduct of Z2A and Hewitt was serious - they played a key role in a program that purported to be a "gifting program" when in fact:

(i) to Hewitt's knowledge, 90% of the money "donated" was retained by IGI; and

(ii) shares were not gifted by a "Swiss philanthropist" as participants were led to believe in IGI's promotional materials. Rather, RCT shares were supplied by Hewitt, and Hewitt knew that the CEO of RCT was not a non-resident Swiss philanthropist;

(b) Staff submit that Z2A's website and Hewitt's evidence confirm that they were experienced in the capital markets;

(c) the Respondents derived significant benefit from their breaches of the Act. In particular, the Merits Panel found that Z2A received $229,453.10 as a result of Z2A's non-compliance with Ontario securities law. The Merits Panel further found that Hewitt authorized, permitted and acquiesced in Z2A's contraventions of Ontario securities law as Z2A's sole director;

(d) the Commission has previously held that five year market bans are appropriate where the respondents engaged in unregistered trading and illegal distributions of

securities but were not involved in a fraud (*Re New Found Freedom Financial* (2013), 36 OSCB 6758 at para. 35 and *Re Simply Wealth Financial Group Inc.* (2013), 36 OSCB 5099 at para. 47); and

(e) the proposed sanctions will convey the message that unregistered trading in securities and the illegal distribution of securities without a receipted prospectus under the guise of a questionable scheme will not be tolerated in Ontario's capital markets and significant sanctions will be imposed for such behaviour.

[29] In my view, there are no mitigating factors or circumstances.

[30] I have reviewed the following decisions referred to me by Staff in assessing the sanctions appropriate in this case: *Re Innovative Gifting Inc.* (2013), 36 OSCB 7775, *Re Innovative Gifting Inc.* (2011), 34 OSCB 3793, *Re Delta 3 Capital Corporation Inc.,* 2010 ABASC 465, *Re Lamoureux,* [2002] ASCD No 125, *Re White* (2010), 33 OSCB 8893, *Re New Found Freedom Financial* (2013), 36 OSCB 6758, *Re Simply Wealth Financial Group Inc.* (2013), 36 OSCB 5099, *Re Cornwall* (2008), 31 OSCB 4840, *Re Axcess Automation LLC* (2010), 33 OSCB 7384, *Re Mega-C Power Corp.* (2011), 34 OSCB 1279, *Re Sabourin* (2010), 33 OSCB 5299, *Re Rowan* (2010), 33 OSCB 91 and *Re XI Biofuels Inc.* (2010), 33 OSCB 10963.

[31] In reviewing these decisions, I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco, supra,* at para. 26).

[32] Staff submits that the sanctions requested are appropriate to the misconduct of the Respondents and would serve as both specific and general deterrence.

[33] The allegations proven by Staff are serious. The Merits Panel found that the Respondents breached key provisions of the Act and that Hewitt was directly and actively involved in the IGI Program.

[34] The Commission found that the actions of Hewitt and Z2A constituted acts in furtherance of trades in RCT shares. The Merits Panel stated that:

> The Respondents' services went well beyond simple office services or delivery. The Respondents facilitated the issuance of shares to individual donors and hence facilitated the entire IGI Program. Their actions in providing this intermediary service between IGI and RCT and physically ensuring that share certificates were provided in accordance with the lists of donors supplied by IGI constituted acts in furtherance of trades in RCT.
>
> *Merits Reasons,* at para. 248.

[35] The Merits Panel also found that Hewitt played an integral role in the IGI Program:

> Hewitt's actions in connection to the IGI Program were with knowledge of and in furtherance of the objectives of the IGI Program. Hewitt played an integral role in the IGI Program and, with Reid, provided IGI with access to the RCT securities

> that are at issue in this proceeding. Absent this connection to RCT, or "the philanthropist" as donors and charities were led to believe, the IGI Program would be missing a key element, issuances of shares to donors.
>
> *Merits Reasons*, at para. 248.

[36] As neither Hewitt nor Z2A was registered to trade in securities during the Material Time, the Commission found that Z2A and Hewitt's acts in furtherance of trades in RCT were contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[37] The Merits Panel also found that during the Material Time, RCT treasury shares were issued to individuals named on the lists provided by IGI to Hewitt. These shares were not previously issued. No preliminary prospectus or prospectus was filed and no receipt was issued in connection with the distribution of these shares. The Merits Panel found that Z2A's trades involving RCT treasury shares were therefore distributions in contravention of the requirements of subsection 53(1) of the Act.

[38] The Merits Panel concluded that as an officer and director of Z2A, Hewitt authorized, permitted and acquiesced in Z2A's breaches of Ontario securities law and was therefore deemed to have breached subsections 25(1)(a) and 53(1) of the Act.

The IGI Settlement Agreement

[39] I reviewed the IGI Settlement Agreement. There are two differences between the sanctions requested by Staff and the sanctions imposed under the IGI Settlement Agreement.

[40] First, there was no order for disgorgement under the IGI Settlement Agreement, whereas Staff requests disgorgement in this case.

[41] Second, there was a permanent trading and acquisition ban and a permanent removal of exemptions imposed on IGI under the IGI Settlement Agreement. The bans imposed on Lushington were for a period of five years. The bans requested by Staff for Z2A and Hewitt are for a period of five years. It appears to me that the bans under the IGI Settlement Agreement were permanent, at least in part, because IGI was found to be the directing mind of the IGI Program.

[42] An administrative penalty of $15,000 each was imposed against IGI and Lushington under the IGI Settlement Agreement.

Sanctions in this Case

[43] The Commission may order a person or company who has not complied with Ontario securities law to disgorge to the Commission "any amounts obtained as a result of the non-compliance." (Subsection 127(1)10 of the Act)

[44] The Merits Panel found that the $229,453.10 received by Z2A from IGI (and reflected in bank account records) was obtained as a result of Z2A's non-compliance with Ontario securities law and that Hewitt authorized, permitted and acquiesced in Z2A's contravention of Ontario

securities law as Z2A's sole director. In imposing an order for disgorgement, I apply the principle that no one should be permitted to benefit financially from their contraventions of the Act.

[45] I note that the misconduct of Z2A and Hewitt was serious and that approximately $2.3 million was raised from investors in contravention of the Act.

[46] Based on the foregoing considerations, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the sanctions requested by Staff. Accordingly, I impose the following sanctions on the Respondents:

(a) trading in any securities by the Respondents shall cease for a period of five years;

(b) the acquisition of any securities by the Respondents shall be prohibited for a period of five years;

(c) any exemptions contained in Ontario securities law shall not apply to the Respondents for a period of five years;

(d) the Respondents shall be reprimanded;

(e) Hewitt shall resign any positions that she holds as director or officer of any issuer, registrant or investment fund manager;

(f) Hewitt shall be prohibited from becoming or acting as an officer or director of any issuer, registrant or investment fund manager for a period of five years;

(g) Z2A and Hewitt shall be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of five years;

(h) Z2A and Hewitt shall each be required to pay an administrative penalty of $15,000 for their failure to comply with Ontario securities law; and

(i) Z2A and Hewitt shall disgorge to the Commission, on a joint and several basis, $229,453.10, being the amount obtained by them as a result of their non-compliance with Ontario securities law.

D. COSTS

[47] Section 127.1 of the Act gives the Commission discretion to order a person or company to pay the costs of a hearing if the Commission is satisfied that the person or company has not complied with the Act or has not acted in the public interest.

[48] Staff seeks an order that the Respondents pay costs to the Commission in the amount of $55,960.00 on a joint and several basis. Staff submits that many individual Staff members assisted with the assessment, investigation and litigation of this matter. Staff, however, seeks only costs related to the time of two Staff members and only for the time period after March 29,

2011. March 29, 2011 was the date that the IGI Settlement Agreement was approved by the Commission.

[49] Applying the factors from *Re Ochnik* (2006), 29 OSCB 5917 and those set out in Rule 18.2 of the Commission's *Rules of Procedure*, Staff submits that it would be reasonable in the circumstances for the Commission to award the costs requested by Staff for the following reasons:

(a) the Respondents received early notice through their receipt of the Notice of Hearing that Staff would be seeking costs in this matter;

(b) the allegations made by Staff were serious, involving contraventions of the Act in which approximately $2.3 million was raised from investors; and

(c) the amount of costs sought is reasonable, particularly since investigation costs prior to March 30, 2011 and assistant investigator time are not included in that amount.

[50] The costs requested are attributed only to the proceeding against Z2A and Hewitt and relate only to costs incurred after March 29, 2011, the date of the IGI Settlement Agreement. Further, Staff was successful in the Merits Hearing in proving all of its allegations in this matter. In the circumstances, I order Z2A and Hewitt to pay to the Commission, on a joint and several basis, costs of the Merits Hearing in the amount of $50,000.00.

CONCLUSION

[51] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule "A" to these reasons.

DATED at Toronto this 30th day of January, 2014.

"James E. A. Turner"

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James E. A. Turner

Schedule "A"

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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 INNOVATIVE GIFTING INC., TERENCE LUSHINGTON, Z2A CORP. AND CHRISTINE HEWITT
ORDER
(Subsection 127(1) and section 127.1 of the Act)

WHEREAS on March 2, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act"), accompanied by a Statement of Allegations dated March 2, 2010 filed by Staff of the Commission ("Staff"), in respect of Innovative Gifting Inc., Terence Lushington, Z2A Corp. and Christine Hewitt;

AND WHEREAS on March 29, 2011, the Commission issued an order approving a Settlement Agreement between Staff and Innovative Gifting Inc. and Terence Lushington;

AND WHEREAS a hearing on the merits with respect to the allegations against Christine Hewitt and Z2A Corp. (the "Respondents") was held before the Commission on October 3, 4, 5, 6, 12 and 24, November 8 and December 21, 2011 (the "Merits Hearing");

AND WHEREAS on July 25, 2013, the Commission issued its Reasons and Decision with respect to the merits and ordered Staff and the Respondents to appear before the Commission on August 12, 2013 at 10:00 a.m. for the purposes of scheduling the sanctions and costs hearing;

AND WHEREAS the sanctions and costs hearing was ultimately held on October 23, 2013;

AND WHEREAS Staff filed written submissions and appeared on October 23, 2013 to make oral submissions; the Respondents did not appear and did not file any materials;

AND WHEREAS I am satisfied that the Respondents were served with all of the relevant materials related to the sanctions and costs hearing;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act;

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by the Respondents shall cease for a period of five years;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents be prohibited for a period of five years;

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

(d) pursuant to paragraph 6 of subsection 127(1) of the Act, Z2A and Hewitt be reprimanded;

(e) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Hewitt resign all of the positions that she may hold as a director or officer of any issuer, registrant or investment fund manager;

(f) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Hewitt be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of five years;

(g) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Z2A and Hewitt be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of five years;

(h) pursuant to paragraph 9 of subsection 127(1) of the Act, Z2A and Hewitt each be required to pay to the Commission an administrative penalty of $15,000 for their failure to comply with Ontario securities law, such amount to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

(i) pursuant to paragraph 10 of subsection 127(1) of the Act, Z2A and Hewitt disgorge to the Commission on a joint and several basis $229,453.10, being the amount obtained by them as a result of their non-compliance with Ontario securities law, such amount to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act; and

(j) pursuant to subsections 127.1 of the Act, Z2A and Hewitt be ordered to pay to the Commission, on a joint and several basis, costs of the Merits Hearing in the amount of $50,000.00.

DATED at Toronto this 30th day of January, 2014.

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James E. A. Turner