

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

-AND-

**IN THE MATTER OF MICHAEL ANTHONY TIBOLLO
A.K.A. MICHELE-ANTONIO TIBOLLO**

Hearing: August 29, 31, September 1, 2, 9, 12-14, 16, 2005.

Panel: Wendell S. Wigle, Q.C. - Commissioner (Chair of the Panel)
Suresh Thakrar - Commissioner
Paul K. Bates - Commissioner

Counsel: Tracy Pratt - On behalf of Staff of the
Alexandra Clark - Ontario Securities Commission

Alan Lenczner - On behalf of the respondent

DECISION AND REASONS

OVERVIEW

A. The Allegations

[1] This is a 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 against Michael Anthony Tibollo A.K.A. Michele-Antonio Tibollo (“Tibollo”).

[2] This hearing arose as a result of a statement of allegations filed by staff of the Commission (“Staff”) and a notice of hearing dated March 11, 2003, which were subsequently amended on May 21, 2004 and on August 26, 2005.

[3] The statement of allegations relates to alleged conduct that occurred between 1996 and August 1998 (the “material time”). The statement alleges that Tibollo violated securities law and acted contrary to the public interest. The allegations (the “Allegations”) may be summarized as follows:

- (1) Tibollo engaged in the illegal distributions, and in unregistered trading and advising of Saxton Investments Ltd. (“Saxton”) securities by, among other things:
 - (i) Marketing and promoting the sale of the Saxton securities to the Ontario public by drafting promotional and investor relations material concerning the Saxton securities, the Saxton Group and the Cuban operations;
 - (ii) Soliciting the sale of, and encouraging the investment (or continued investment) in, the Saxton securities through meetings with, and presentations to, Saxton sales representatives, prospective investors and investors; and
 - (iii) Soliciting the sale of, and encouraging the investment (or continued investment) in, the Saxton securities by participating in trips to Cuba with salespeople and investors.
- (2) Tibollo engaged in the illegal distributions and in unregistered trading of Sussex International Ltd. (“Sussex International”) securities;
- (3) Tibollo knew, or ought to have known, that the investing public and Saxton salespeople relied upon his representations concerning the Saxton securities and their value and the financial health, profitability, potential growth and development of the Cuban operations. His professional status and strong links with the Cuban government gave credibility to the Saxton securities and to the misleading claims that such securities were a no, or low, risk investment with significant growth potential.

[4] The August 26, 2005 amendment to the amended statement of allegations filed in 2004 resulted in the addition of the allegation that Tibollo engaged in unregistered “advising” with respect to Saxton securities.

[5] Counsel for Staff seeks an order of the Commission pursuant to sections 127 and 127.1 of the Act that:

- a. trading in securities by Tibollo cease permanently or for such period as is specified by the Commission;
- b. Tibollo be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as specified by the Commission;
- c. Tibollo be reprimanded;
- d. Tibollo be ordered to pay the costs of the Commission’s investigation and the hearing; and
- e. such other orders as the Commission may deem appropriate.

[6] We agreed that the parties would have the opportunity to make further submissions relevant to sanctions if this panel were to find that Tibollo has breached the Act and/or acted contrary to the public interest.

B. Tibollo

[7] Tibollo is a lawyer and business person. He was called to the Ontario Bar in 1987 and has never been registered in any capacity with the Commission.

C. The Witnesses

[8] Counsel for Staff called thirteen witnesses. These witnesses were:

-Stephen Cherniak, a chartered accountant from KPMG, who initially was the custodian for Saxton and was later appointed as the receiver for Saxton;

-Brian Crawford (“Crawford”), a chartered accountant, who was a former audit partner at BDO Dunwoody, the accounting firm that was acting as the auditors for Sussex Admiral Group;

-Robert Davies (“Davies”), a chartered accountant hired by Saxton in October 1996 to establish proper financial records for the company;

-Nick Torchetti (“Torchetti”), a securities lawyer and a partner at the Aird & Berlis law firm in Toronto who met both Tibollo and Luke McGee (see below) in 1997 to discuss securities law issues regarding Saxton; and

-Geoffrey Myers (“Myers”), a partner at the Lang Michener law firm in Toronto practicing general business law, including securities law, who provided legal advice to the Saxton Group.

[9] The panel also heard from:

-Allan Dorsey (“Dorsey”), a registered salesperson and investor in Saxton;

-Larry Ayres (“Ayres”), a Saxton investor, who later became a salesperson for Saxton;

-Lawrence Hurley (“Hurley”), the president of Saxton for a two-week period in July 1998;

-Luke McGee (“McGee”), a lawyer who was called to the Ontario bar in 1993 and a member of Saxton management in late 1996 (or early 1997) who acted as an intermediary between the Cuban operations, Export Investors Group Inc. and Saxton;

-John Haverkamp, a farmer working in Ontario and an investor in Saxton who was subsequently elected to the board of directors of Saxton after the financial difficulties were discovered;

-Eric Haverkamp, an investor in Saxton;

-Ron Masschaele (“Masschaele”), an investor in Saxton who later became a salesperson for Saxton; and

-Robert Adzija (“Adzija”), a salesperson for Saxton.

[10] Counsel for Tibollo called Michael Anthony Tibollo as his only witness.

THE ISSUES

[11] This proceeding raises the following issues:

a. Did Tibollo engage in trading and advising, of Saxton securities, without being registered with the Commission and with no available exemption from the registration requirements of Ontario securities law, contrary to section 25 of the Act and to the public interest?

b. Did Tibollo engage in trading of Sussex International securities, without being registered with the Commission and with no available exemption from

the registration requirements of Ontario securities law, contrary to section 25 of the Act and to the public interest?

c. Did Tibollo make inaccurate or misleading representations to Saxton investors and salespeople, contrary to section 38 of the Act and to the public interest?

d. Did Tibollo engage in the illegal distributions of Saxton securities and of Sussex International securities, contrary to section 53 of the Act and to the public interest?

THE DEGREE OF PROOF

[12] The burden of proof in this case is the balance of probabilities. In *Re Lett* (2004), 27 O.S.C.B. 3215 at paragraph 33, the Commission relied on *Bernstein v. College of Physicians & Surgeons (Ontario)* (1977), 15 O.R. (2d) 447 (Ont. Div. Ct.), at 470 where O’Leary J. stated:

In all cases, before reaching a conclusion of fact, the Tribunal must be reasonably satisfied that the fact occurred, and whether the Tribunal is so satisfied will depend on the totality of the circumstances involving the nature and consequences of the fact or facts to be proved, the seriousness of an allegation made, and the gravity of the consequences that will flow from a particular finding.

[13] We will be guided by these factors in coming to our decision.

[14] At the hearing, Staff relied on some hearsay evidence which is admissible in proceedings before the Commission pursuant to section 15 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. Corroboration is an important factor in assessing the weight to be given to such evidence.

PARTIES’ SUBMISSIONS

A. Staff

[15] Counsel for Staff submits that Tibollo engaged in unregistered trading and advising of Saxton securities and that he extolled and emphasized the growth and the success of the Cuban operations and, by extension, the value of investing in Saxton. Hence, it is Staff’s position that his actions facilitated investments in Saxton. Staff further submits that Tibollo engaged in unregistered trading of Sussex International securities by soliciting funds to finance the Cuban operations from Ontario investors.

[16] Staff submits that Tibollo made inaccurate or misleading representations to Saxton investors and salespeople. Staff submits that Tibollo knew that Saxton was communicating to investors that the so-called market value of their investment was increasing as a result of the success and profitability of the Cuban operations. Further, Staff submitted in final oral arguments that Tibollo was communicating to investors that Sussex Group Ltd. (Barbados) intended to go public and to be listed on the Alberta Stock Exchange. However, in view of the fact that this allegation was not expressly set out in the amended statement of allegations dated August 26, 2005, and the evidence before us, we cannot make any finding in support of this allegation.

[17] Staff further submits that Tibollo engaged in the illegal distributions of Saxton securities in that the distributions were abusive of the seed capital exemption, with over \$36 million raised from over 800 investors using more than thirty corporate entities, all with the stated goal of funding one common enterprise. Staff submits that none of the requirements set out in paragraph 72(1)(p) of the Act were met. In particular, prospectus-level disclosure was not provided to investors as the offering memoranda were inadequate; investors were not able to properly evaluate the information provided by Saxton; selling expenses were paid in the form of commissions to salespeople; and Allan Eizenga (“Eizenga”), who was Saxton’s registered director and president, acted as promoter to numerous Saxton offering corporations within the same calendar year.

[18] Staff further submits that Tibollo engaged in illegal distributions of Sussex International securities. Sussex International never filed any prospectus or preliminary prospectus with the Commission and no *Securities Act* exemption applied to the distributions.

B. Tibollo

[19] Counsel for Tibollo submits that Tibollo became president of Sussex Group Ltd. (Barbados) on November 1, 1997 and that, at that time, the equity of the company was valued at approximately \$5 million. He submits that Tibollo had no involvement with the trading and advising of Saxton securities, or the trading of Sussex International securities and that Eizenga was the individual who convinced these investors to buy shares in the companies. He submits that Tibollo has never been interested in the stock market and has never owned a share of any stock.

[20] Counsel further submits that Tibollo did not trade in shares or act in furtherance of a trade as: (1) he did not intentionally recommend that anyone buy shares or securities; (2) there was no reliance by anyone on a recommendation by Tibollo to purchase shares or securities; and (3) there was no profit motive on the part of Tibollo.

[21] Counsel submits that although Tibollo attended meetings from time to time to provide a status report on the operations in Cuba as the president of Sussex Group Ltd., this activity was not an act in furtherance of a trade. Counsel argues that there is no evidence that any investor or potential investors were encouraged or advised by Tibollo to purchase Saxton securities.

[22] Counsel further submits that there is no evidence that Tibollo discussed securities with investors during a 1997 trip to Cuba, which was organized to show investors the operations there, and that Tibollo's interaction with investors during this trip did not amount to an act in furtherance of a trade.

THE LAW

Trading and Advising

[23] Staff relies on several decisions to support the position that Tibollo engaged in trading and advising of Saxton securities and in trading of Sussex International securities through conduct that fell within the definitions set out in subsection 1(1) of the Act.

[24] The definitions of the terms "trade" and "advisor" that were in effect during the material time read as follows:

"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,
- (b) any participation as a trader in any transaction in a security through the facilities of any stock exchange or quotation and trade reporting system,
- (c) any receipt by a registrant of an order to buy or sell a security,
- (d) any transfer, pledge or encumbering of securities of an issuer from the holdings of any person or company or combination of persons or companies described in clause (c) of the definition of "distribution" for the purpose of giving collateral for a debt made in good faith, and
- (e) *any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing*; ("opération"). [emphasis added]

"advisor", a person...engaging in or holding himself...out as engaging in the business of advising others as to the investing in...of securities.

[25] Staff relies on *R. v. Sussman*, (1993) 16 O.S.C.B. 1209 (Prov. Ct.) where providing potential investors with subscription agreements to execute was found to fall within the definition of trading. Staff relies on *Re Guard Inc.*, (1996) 19 O.S.C.B. 3737; *Re Dodsley*, (2003) 26 O.S.C.B. 1799; and

Re First Federal Capital (Canada) Corp., (2004) 27 O.S.C.B. 1603, where the distribution of promotional materials concerning potential investments were found to constitute trading. Staff also relies on *Del Blanco v. Alberta (Securities Commission)*, [2004] A.J. No. 1222 (C.A.) where issuing and signing share certificates were found to constitute trading.

[26] Staff submits that conducting information sessions with groups of investors and meeting with individual investors to promote a potential investment constitutes trading. Staff relies on *Re Hrapstead*, [1999] 15 B.C.W.S 13, where the British Columbia Securities Commission (the “B.C.S.C.”) had to determine whether Hrapstead's conduct constituted trading under the *British Columbia Securities Act* (the “B.C.S.A.”). In considering this question, the B.C.S.C. looked at subsection 1. (1)(f) of the B.C.S.A. Subsection 1. (1)(f) is the “act in furtherance of a trade” aspect of the definition of trade, the wording of which is the same as the analogous section in the Ontario Act. In finding that Hrapstead's conduct did fall within this section, the court cited the following activities on the part of Hrapstead: (1) the preparation and dissemination of materials describing investment programs; (2) the preparation of forms of agreements for signature by investors; (3) conducting information sessions with groups of investors; and (4) meeting with individual investors.

[27] The B.C.S.C. noted that these activities would be meaningless if the intent were not to further the participation by investors in the investment program. The considerable returns claimed and Hrapstead’s commission gave strong incentive to facilitate investment in the program. Hence, the B.C.S.C. found that Hrapstead's activities in connection with the investment programs constituted trades within the meaning of subsection (f) of the definition of “trade” in the B.C.S.A.

[28] Further, Staff submits that an act in furtherance of a trade does not require a completed sale of a security (see *Re First Federal Capital (Canada) Corp.* cited above; *Re Dodsley* cited above; and *Re Hrapstead* cited above).

[29] With respect to advising, Staff submits that the definition of “adviser” found at subsection 1(1) of the Act contains two distinct requirements: (1) the provision of advice concerning the wisdom or value of investing in a particular security; and (2) the provision of this advice in a manner that reflects a business purpose. Staff submits that the advice does not have to be provided while in the business of advising.

[30] Staff brought to our attention the decision of *Re Costello*, (2003) 26 O.S.C.B. 1617, where the Commission found at paragraph 28 that:

Providing mere financial information as to specific securities does not constitute the giving of advice, but providing an opinion on the wisdom or value or desirability of investing in specific securities does.

[31] In *Re Canadian Shareowners Association*, (1992) 15 O.S.C.B. 617, the Commission stated that in assessing any information provided, the Commission must consider the credibility and qualifications of the person providing the information, as well as the total effect of the information on a prospective investor. Similarly, to determine whether advice has been given with a business purpose, the totality of the evidence must be considered. Evidence of financial benefit, such as the

receipt of a commission, was found to be a useful indicator of the requisite purpose (see *Re Donas*, [1995] 14 B.C.S.C.W.S. 39).

[32] Counsel for Staff also refers to *Re Marchmont & MacKay Ltd.* (1999) 22 O.S.C.B. 4705, where the Commission stated that persuading investors to remain invested in a security, when such advice is not in the investor's best interests but rather serves the interests of the promoter, may constitute conduct contrary to the public interest.

Prohibited Representations Concerning Stock Exchange Listings

[33] The purpose of the prohibition against making certain representations concerning stock exchange listings was explained by the B.C.S.C. in *Donas*, cited above. In that case, the B.C.S.C. explained that the prohibition existed to prevent a seller from holding out that, by virtue of being listed on a stock exchange, a security will soon have greater liquidity, a larger following and, possibly, higher value.

[34] Section 38(3) of the Act in effect during the material time read:

Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange.

THE EVIDENCE

A. Corporate Organization

[35] The conduct that led to the statement of allegations and the notice of hearing relates to two companies: Saxton which was connected with 38 companies incorporated in Ontario and Sussex International. These entities offered securities to the Ontario public ostensibly to raise investment capital for the companies including the funding of business operations in Cuba.

Saxton

[36] Saxton was connected with a series of 38 companies that were incorporated in Ontario between January 1995 and April 1998. By July 1997, there were some 36 companies. The structure of the group was divided into the offering corporations which raised investment capital, intermediary corporations that transferred investments, and the Sussex Group as the owner and operator of the assets.

[37] Saxton's head office, where the books and records for the Saxton entities were maintained, was located initially in London and then in Burlington, Ontario. Eizenga was Saxton's registered director, president and promoter.¹ Saxton and Eizenga established numerous other corporations (the "offering corporations"). Eizenga was the promoter for each offering corporation. Rick Fangeat ("Fangeat") was the sales manager of Saxton who acted as an intermediary between Saxton's head office and several other Saxton salespeople. Fangeat was also the president and secretary of Sussex International.² McGee became Saxton's vice-president in 1997. Fangeat and McGee reported to, and took direction from, Eizenga. Eizenga approved all promotional and investor relations material distributed by Saxton.

The Offering Corporations

[38] Saxton Trading Corp. was the first of the companies to be incorporated by Eizenga on January 13, 1995. Saxton Trading Corp. had an offering memorandum which was used to solicit funds from Ontario investors. The corporation also had a management service agreement with Saxton, which provided Saxton with the authority to manage the investment and reinvestment of all the assets of Saxton Trading Corp.

[39] Additional companies were then incorporated on three primary occasions: July 11, 1996, March 17, 1997 and February 24, 1998. The offering corporations were incorporated pursuant to the laws of Ontario.

[40] The main function of each offering corporation was to raise funds from Ontario investors for the Sussex Group operations. Many, but not all of these corporations had offering memoranda which were used in soliciting funds. They provided very limited information about the corporations. The majority of the marketing material was done with glossy brochures describing the business operations in Cuba, none of which amounted to prospectus level disclosure.

[41] The offering corporations purported to rely on the "seed capital" exemption set out in subsection 72(1)(p) of the Act. The seed capital exemption allows a private issuer to solicit investment capital from no more than 50 prospective purchasers, provided sales are made to no more than 25 purchasers. In their purported reliance on this section, Saxton would register 25 subscribers for a corporation, at which point they would move to the next company and claim the same exemption. The sales of Saxton securities constituted trades in securities of an issuer that had not been previously issued. None of the offering corporations filed a preliminary prospectus, a prospectus, an offering memorandum, or a Form 20 with the Commission.

¹ In July of 1998, Hurley became the president of Saxton for a brief two-week period. He was asked by Fangeat, who no longer trusted Eizenga's handling of Saxton's funds, to accept this position. At that time, Eizenga advised management that information regarding the use of funds would no longer be provided. Two weeks later, Eizenga resumed control of Saxton.

² See testimony of John Haverkamp in transcript dated September 12, 2005 at pp. 486-487.

[42] On October 7, 1998, the Court appointed KPMG Inc. ("KPMG") as the custodian of Saxton's assets. In early 1999, KPMG reported that the offering corporations had raised approximately \$37 million from Ontario investors.

Saxton's Investment Capital

[43] Certain of the funds from Saxton were dispersed to various projects, including Saxton S.A., Saxton Environmental and Saxton LMD. From time to time Saxton would also directly purchase supplies or equipment required for the distribution operations in Cuba. However, the most common transaction was to transfer funds to 1125956 Ontario Ltd., a corporation controlled by Sylvester.³

[44] Once capital was raised for the offering corporations, it would be deposited in bank accounts and within a few days would be transferred to Saxton.⁴ Saxton's purpose was to be the management company within the group, receiving the funds raised from the seed capital companies and investing them in Saxton's various operations.

The Sale of Saxton Securities

[45] The offering corporations offered two investment products to the Ontario public: (a) a "GIC" which was later renamed a "Fixed Dividend Account"; and (b) an "Equity Dividend Account". An investor who purchased one of these products purchased shares in one of the respective companies.

[46] While the "GIC" promised investors an annual return of 10.25%, the Fixed Dividend Account offered investors either a 10.25% annual return for a three year term compounded or a 12% annual return for a five year term compounded. Investors in the Equity Dividend Account product were told to expect 25% to 30% annual growth and that their money was invested in the Saxton Group's operations. The rate of return on, or the growth of, their investment was purported to result from the profitability and growth of the businesses mainly from the operations in Cuba. Investments generally ranged between \$10,000 and \$100,000.⁵

[47] Saxton distributed quarterly account statements to all investors who purchased the Saxton securities. These account statements were created and disseminated on the instructions of Eizenga and provided comfort and confidence to the investors in the Saxton's business and on the return of their investment. Although the account statements purported to disclose an increase in the "market value" for each quarter for such securities, there were no financial statement or record of any revenue generated by the Saxton operations and no means by which Saxton could establish the net

³ 1125956 Ontario was a corporation controlled by Sylvester through Export Investors Group Inc. 1125956 Ontario was the conduit by which funds were supposed to flow from Saxton to either Sussex Group Bahamas or Sussex Group Barbados.

⁴ Testimony of Davies, transcript dated September 1, 2005 at p. 187.

⁵ Transcript dated September 1, 2005 at p. 187.

results of Saxton's Cuban or other operations. Tibollo was not involved with the production of any of these documents.⁶

Sussex International's Distribution

[48] Sussex International offered two similar investment products to the Ontario public for which investors did not receive a prospectus or an offering memorandum prior to purchasing the securities. Sussex International did not file a prospectus, preliminary prospectus, offering memorandum or a Form 20 with the Commission and no prospectus exemption was available to it.

Sussex Group

[49] Sussex Group Ltd. (Barbados) ("Sussex Group") was created in July 1997 to consolidate various operating entities in Cuba in preparation for a public offering of its securities. This occurred because once the management of the Saxton Group received legal advice relating to breaches of securities law from Richard DeVries ("DeVries"), a securities lawyer from Alberta, management attempted to effect a "reverse take-over" of Saxton, so that shareholders would have a market for their shares. This process contemplated having Saxton vend-in shares to a shell corporation listed on the Alberta Stock Exchange. However, management was unable to use Saxton Investments Ltd. as a corporate entity because of a dispute over who owned the operations in Cuba. As a result all of the Caribbean entities were consolidated and documents were signed transferring the assets in exchange for shares in the Bahamian corporation.

[50] Sussex Bahamas⁷ was the owner and operator of the business assets in Cuba and the Caribbean. Although there were some business initiatives in Mexico, Argentina and India, the primary operations were in Cuba. The Cuban operations consisted mainly of supplying products for the beverage industry, including draft beer, "bag-in-the-box" drinks, coffee, milk, juice and other soft drinks. Later on in 1998, the company became involved in a joint venture with the Cuban government relating to a printing press which, once complete, was purported to be the "golden gem" of the Cuban operations.⁸ The two sources of financing for the Cuban operations were funds received from either Saxton or Export Investors Group, or internally-generated funds from operations.

⁶ Davies testified that the account statements were prepared by staff at Saxton Investments Limited. The process for preparing the statements was dictated by Eizenga. Davies oversaw the administrative staff who worked for Eizenga in preparing them (see transcript dated September 1, 2005 at pp. 200-201).

⁷ Robert Davies testified that Sussex Bahamas was the parent company of the Cuban operations while Sussex Group Barbados was created afterwards to replace the Bahamas Company. Sussex Group Barbados operated the various Cuban and other operations (see transcript dated September 1, 2005 at p. 185).

⁸ Testimony of Eric Haverkamp, transcript dated September 13, 2005 at p. 631.

B. Tibollo's Involvement

[51] During the material time, Tibollo was a commercial lawyer, with a practice specialized in international transactions, as well as a business consultant. Tibollo had significant connections and relationships with Cuban government officials and spoke Spanish fluently. He visited Cuba on numerous occasions on business.

[52] Tibollo met James Sylvester ("Sylvester") for the first time on a flight back from Cuba. Sylvester had two companies, Export Investors Group Inc. ("Export") and Sussex Admiral (Bahamas) Limited, which were already involved in business operations in Cuba.

[53] In January 1996, Sylvester asked Tibollo to travel with him to Elliott Lake to address the Mayor and the Council of Elliot Lake on making products that could be exported to Cuba. On that flight to Elliott Lake, Tibollo was introduced to Eizenga and Crawford. At the time, Tibollo was external corporate counsel for Sussex Admiral Group Ltd. and was also a business consultant. From January 1996 to July 1997, he provided legal services to Export and Sussex Admiral Group Ltd. as well as business consulting work through a company incorporated in Barbados called Islazul.

[54] In the fall of 1996, the relationship between Eizenga and Sylvester began to deteriorate, culminating in a falling out over corporate assets in February 1997. Tibollo was asked to act as an escrow agent and to hold the shares of Export and Sussex Admiral Group Ltd. Tibollo drafted the escrow agreement based on instructions provided by McGee and Sylvester and became escrow agent on February 11, 1997.⁹

[55] Eizenga eventually decided to combine all of the companies into a public company. He had retained DeVries, an Alberta securities lawyer, who recommended that a reverse take-over could remedy some of the securities law problems he had identified. It was contemplated that, by way of a reverse take-over, Sussex's assets would be vended into F.S.P.I Technologies Corp., an Alberta Stock Exchange listed company. Tibollo was also retained to do the paper work required to amalgamate the corporations. He drafted various agreements in June or July 1997.

[56] The amalgamation of the diverse portfolios into one entity in Barbados was completed on July 10, 1997. Eizenga and Sylvester then asked Tibollo to become the president of Sussex Group. He agreed to take on the position and asked that financial statements be prepared. From July 1997 onward, Tibollo became increasingly involved with Sussex Group.

[57] During the summer 1997, concerns were raised regarding the legality of the Saxton securities distributions and other securities law issues. In June of 1997, Tibollo and McGee met with Torchetti, a securities lawyer at the Aird & Berlis law firm. Torchetti recalled meeting with Tibollo and Tibollo's client in the spring or summer of 1997. Torchetti testified that during the meeting he identified three securities law problems at the meeting: (1) the securities had been distributed without a prospectus; (2) those who were selling the securities were not registered; and (3) there

⁹ Transcript dated September 13, 2005 at p. 731.

were no securities law exemptions available to cure these problems. McGee testified that Torchetti provided little advice in terms of solving the problems identified and therefore was not retained. A second opinion was sought from Lang Michener.¹⁰

[58] On August 7, 1997, the Saxton Group sought a legal opinion from Myers at Lang Michener. In attendance at the meeting were: Crawford, McGee, Eizenga, Fangeat, and Tibollo. The purpose of the meeting was to review the manner in which some \$30-36 million dollars had been raised by the Saxton Group and to determine whether there were any concerns from a securities law point of view. At the meeting, Myers said that they had substantial problems and that the offerings were illegal public offerings. There were also discussions about tracing the funds that had been raised through the distributions as those in attendance were unable to tell Myers where the funds were located. Myers advised them that they could not raise more funds until they could demonstrate what happened to the funds they had already raised. Myers also advised that they needed to devise a strategy to resolve these issues.¹¹

[59] Following the August 7, 1997 meeting, Myers provided a legal memorandum, stating that there was a substantial risk that regulators would find there had been a two-year pattern of raising money in complete disregard of the Act. The memorandum was delivered to McGee and Eizenga.¹² Crawford testified that those aware of the substance of the memorandum were: McGee, Eizenga, Fangeat, himself, and Tibollo.¹³ Myers testified that the advice addressed three areas: (1) the primary area of concern was the missing funds and the need to trace these funds; (2) the second area of concern was the manner in which the funds were raised which led to the opinion that Saxton had engaged in a two-year illegal public offering; and (3) what, if anything could be done to remedy these problems.

[60] In August 1997, Tibollo began receiving and disbursing Saxton funds through his trust account for Sussex Group.

[61] On November 1, 1997, Tibollo officially became the president of Sussex Group and began running the Cuban operations.¹⁴

[62] In early December 1997, Eizenga terminated Myers' retainer (Lang Michener) and fired both Crawford and McGee. Crawford had been retained by Saxton to advise the company on what needed to be done to take the company public while McGee, a lawyer who was the vice-president and a member of Saxton management, acted as an intermediary between the Cuban operations, Export and Saxton's investors.

[63] Rene Sorrell, a securities lawyer from McCarthy Tetrault, was retained to implement what Myers had suggested. Tibollo had two or three meetings with Sorrell, and provided him with updates

¹⁰ Transcript dated September 12, 2005 at pp. 595-596.

¹¹ Transcript dated September 12, 2005 at pp 511-516.

¹² Transcript dated September 12, 2005 at p. 537.

¹³ Transcript dated August 31, 2005 at pp.116-117.

¹⁴ Transcript dated August 31, 2005 at pp. 50 and 55 and transcript dated September 13, 2005 at p. 750.

on the Cuban operations and other jurisdictions. Sorrell prepared a summary that was given to all investors for a meeting that took place in London in the fall of 1998, after the OSC had stepped in.

[64] From the summer of 1998 to 2000, Tibollo continued on as the president of Sussex Group. In August 1998, Peter Lockyear (“Lockyear”) of Harrison Elwood started to manage the affairs of the Saxton Group in conjunction with KPMG, the court-appointed custodian. Tibollo testified that he stayed on as president of Sussex until December 2000 because he was asked to do so by Lockyear.¹⁵ On August 12, 1998, Tibollo also voluntarily met with Staff of the Commission. Tibollo also had several meetings with them after that.¹⁶

ANALYSIS

A. Did Tibollo engage in trading and advising of Saxton securities without being registered with the Commission and with no available exemption from the registration requirements of Ontario securities law, contrary to section 25 of the Act and to the public interest?

[65] Although Staff submits that Tibollo engaged in unregistered trading and advising of Saxton securities, there is no clear evidence that Tibollo was involved in marketing and promoting the sale of these securities to the Ontario public by drafting promotional and investor relations material concerning the Saxton securities, the Saxton Group and the Cuban operations. The evidence shows that Tibollo was involved in drafting legal documents relating to the reverse take-over.

[66] There is also an allegation that Tibollo was involved in soliciting the sale of, and encouraging the investment (or continued investment) in, Saxton securities through meetings with, and presentations to, Saxton sales representatives, prospective investors and investors. During the material time Tibollo attended a number of meetings or events at which Saxton investors or prospective investors were present: (1) a meeting at Masschaele’s house in February 1997; (2) a sales meeting at Saxton’s head office in Burlington in May 1997; (3) a meeting at Tibollo’s office on October 6, 1997; (4) a meeting with Saxton salespeople and investors on May 21, 1998; (5) a meeting at Union Golf Course in St. Thomas in July 1998; and also (6) a trip to Cuba with investors and Saxton executives in June 1997.

[67] Below is our review of the evidence regarding Tibollo’s attendance at meetings with salespeople/investors and investors in 1997 and 1998.

¹⁵ Transcript dated September 13, 2005 at p. 770-771.

¹⁶ Tibollo testified that Lockyear persuaded him to stay on as president of Sussex because he was seeking to sell the Saxton Group, and it was only with Tibollo's running the Cuban operations that the company would have any incoming cash flows. Tibollo was working with Lockyear to accomplish this goal, and was in frequent contact with him. Tibollo testified that he would speak with Lockyear once or twice a week, either in London or Toronto, and produced quarterly reports to the OSC starting on August 12, 1998.

February 1997 Meeting at Masschaele's House

[68] There was a meeting at Masschaele's home in February of 1997. The meeting was initiated by Masschaele and Ayres for the purpose of learning more about Saxton. McGee testified that he asked Tibollo to attend to provide an update on the Cuban operations.

[69] In attendance were Tibollo, Masschaele, Marlene Masschaele, Ayres and his wife, Frank Latam ("Latam") and McGee. The evidence of Tibollo and other witnesses was that Tibollo spoke in general terms about business and investment opportunities in Cuba, the mechanics of doing business under Cuban laws, and the political situation in Cuba, as well as his own political connections, and the beverage operation. Tibollo speculated that the barriers with the U.S. would come down, and that this would probably lead to the expansion of the Cuban operation, referring to this as a "golden opportunity" to invest in the country. Witnesses did not recall Tibollo speaking about any problems or risks associated with the Cuban businesses.

[70] Witnesses recalled that McGee, and not Tibollo, spoke about the rate of return on the investments as being 50 cents on the dollar. Tibollo never said anything about buying or selling the securities or whether or not they could be sold.

[71] Both Masschaele and Ayres testified that following the meeting they invested more money into the company, and that the statements made by Tibollo and his presence influenced their decisions to do so. Masschaele also indicated that the statements made by Tibollo influenced his decision to become a Saxton salesperson in April of that year.

May 1997 Meeting in Burlington

[72] A sales meeting took place in May 1997 at Saxton's head office in Burlington and was attended by Tibollo, Eizenga, McGee, Fangeat, Sylvester, Latam, Adzija, Karen West, Strongolos, Ayres, Dorsey and Masschaele, along with other sales representatives and individuals from Cuba.

[73] The purpose of the meeting was to reward salespeople for their work, talk about the performance of the Cuban operations, provide projections about future performance, and encourage representatives to sell more securities.

[74] Tibollo arrived at the meeting late, having arrived directly from the airport. Tibollo did not recall giving a speech but testified that he might have answered some general questions. This testimony was consistent with the testimony of Masschaele and Ayres who recalled that Sylvester made a presentation on the operations in Cuba, but could not recall whether Tibollo spoke at the meeting.

[75] Dorsey testified that the statements made by Tibollo at this meeting and Tibollo's background, gave him confidence in the product and influenced his decision to invest in Saxton. Dorsey also testified that after the meeting he traveled to Cuba and formed some of his own impressions about Cuba and its potential. Following the meeting, Dorsey invested \$20,000 in Saxton.

[76] Masschaele testified that he was impressed by the meeting and by hearing from the people doing the groundwork. In August 1997, Masschaele rolled his investments from a fixed dividend account into a straight equity account. Masschaele testified that discussions with Fangeat and Latam led him to make the conversion.

[77] Following the meeting, Ayres invested funds in Saxton and became a sales representative.

October 6, 1997 Meeting at Michael Tibollo's Office

[78] We heard evidence of a meeting at Tibollo's office on October 6, 1997. In attendance at the meeting were Tibollo, Ayres, Masschaele, Latam, Guy Fangeat, McGee and Crawford.

[79] Ayres testified that he could not recall who initiated the meeting, but stated that the purpose of the meeting was to provide an update on the Cuban operations. He testified that Tibollo's role at the meeting was to speak about the politics of Cuba, how to get things done, and the prospect of expansion if the barrier with the U.S were to come down. He testified that at various meetings Tibollo would leave the room when discussions about raising funds and selling the investment ensued, but could not recall whether on this particular occasion Tibollo was present for the entire meeting.

[80] Masschaele testified that there was some discussion about the need for additional money to expand the Cuban operations.¹⁷ Masschaele had trouble recalling the extent of Tibollo's participation in the meeting, but indicated that it was "just more or less about the company itself. That everything down in Cuba was proceeding."

[81] Crawford stated explicitly that Tibollo never encouraged, recommended or solicited investment in Saxton.

May 21, 1998 Meeting with Saxton Salespeople/Investors

[82] We heard evidence of a meeting with Saxton salespeople and investors on May 21, 1998. In attendance were Tibollo, Jim Tallus, Eizenga, and Towse along with most of the sales representatives, including Ayres, Masschaele, Latam, and Adzija.

¹⁷ Transcript dated September 13, 2005 at p. 672.

[83] Ayres testified that the meeting seemed like a promotional meeting and that the tone was upbeat. According to Ayres: it “just seemed like everything was positive”.¹⁸ There was no mention of any securities law problems. Ayres recalled that there was an update on the Cuban operations and a discussion of the need for additional monies to expand the Cuban operations.¹⁹ Ayres also testified that, generally, when it came to money discussions, Tibollo would leave the room, although he was not sure whether this occurred at this particular meeting.²⁰

[84] Masschaele testified that Tibollo spoke about the expansion of the Cuban operations, and that everything looked good. The only problem discussed at the meeting was the need to straighten out some accounting paperwork before the company could go public.

July 1998 Meeting with Saxton salespeople/investors at Union Golf Course in St. Thomas

[85] There was a July 1998 meeting at the Union Golf Course in St. Thomas attended by Tibollo, along with a number of sales representatives, including Fangeat, Latam, Ayres, Masschaele and Adzija.

[86] Tibollo testified that Fangeat asked him to attend the meeting. He further testified that he provided an update on what was happening in Cuba, and immediately departed, though the meeting continued after his departure.

[87] Ayres and Masschaele testified Tibollo spoke about the printing press operation and the need for \$3 to \$5 million to get it going and keep it operational. They testified that, for the first time, they asked Tibollo whether he had personally invested any money in the company, and that he told them that he had not. Ayres testified that upon learning of this, he stopped raising money. Masschaele also testified that this information caused him to slow down his efforts to raise funds.

Trip to Cuba with Salespeople and Investors

[88] We now turn to the allegation that Tibollo was involved in soliciting the sale of, and encouraging the investment (or continued investment) in, the Saxton securities by participating in trips to Cuba with salespeople and investors.

Trip to Cuba – June 1997

[89] On or around June 9, 1997 the Saxton Group paid for a trip to Cuba for investors and executives of Saxton. McGee testified that this included a total of about 39 executives and investors, other than salespersons. Crawford confirmed this number, testifying that Eizenga and Sylvester each

¹⁸ Transcript dated September 9, 2005 at pp. 413-414.

¹⁹ Transcript dated September 9, 2005 at p. 414.

²⁰ Transcript dated September 9, 2005 at pp. 410-411.

took about 6 to 10 investors with them, in addition to a group that included himself, McGee, Mr. Strongolos and Fangeat.²¹ At the time of the Cuban trip Tibollo was already in Cuba on business.²²

[90] McGee testified that the decision to bring investors down to Cuba to see the operations was a communal one that he made with Eizenga and Sylvester. Similarly, Crawford testified that he was told by Eizenga and Sylvester that the purpose the trip was to allow investors to “see that their investment dollars were actually being used in the business they invested in”.²³

[91] As an example of the activities during this trip, Crawford testified that some persons toured the operations and hotels, saw the brewery operations and had some business meetings involving these operations, at which Steve Smith and Jim Strongolos attended. Additionally, they discussed what would be required to take the company public.²⁴

[92] Dorsey testified that during that week in Cuba, he flew to Havana and toured a variety of locations. Dorsey said their itinerary included a flight to Santiago to have lunch with Tibollo and a local Cuban official and a tour of the beer operations. Dorsey and others also went to Veradero to visit hotels that were being developed and that he was not accompanied by Tibollo during that part of the trip. Later during that week, Dorsey went to back to Havana and visited a cigar manufacturer with Tibollo. Dorsey testified that he could not recall whether Tibollo himself discussed the profitability of the Cuban operations, but that the implication was that they were doing really well. Dorsey testified that, following this trip, he had a lot more faith in the business, for which he credits “a great deal” to his interactions with Tibollo.²⁵

[93] Following the trip, Dorsey personally purchased more shares in Saxton and he recommended the investment to his clients, who also purchased greater shares in Saxton.²⁶

[94] Tibollo testified that during the trip he was invited to speak at the Hotel Nacionale and at a cocktail party at Sylvester’s home in Cuba and that his appearance at the Hotel was a question and answer session. He testified that he did not accompany investors on a tour of the operations in Cuba.²⁷

[95] There was also mention of a trip to Cuba in the summer of 1998. The purpose of this trip was to provide Davies with an opportunity to gather the necessary information for the audited financial statements for the companies.²⁸

²¹ Transcript dated August 31, 2005 at p. 102.

²² Transcript dated September 13, 2005 at p. 742.

²³ Transcript dated August 31, 2005 at p. 103.

²⁴ Transcript dated August 31, 2005 at p. 104.

²⁵ Transcript dated September 2, 2005 at p. 330.

²⁶ Transcript dated September 2, 2005 at p. 327.

²⁷ Transcript dated September 13, 2005 at p. 742.

²⁸ Davies was an accountant who joined Saxton in October 1996. Davies left Saxton for Sussex in December 1997 and worked with Jamie McPherson, an accountant retained to prepare financial statements. Davies reported to Eizenga. Although his position involved the preparation of financial statements, he lacked both instructions and the

B. Did Tibollo engage in trading of the Sussex International securities, without being registered with the Commission and with no available exemption from the registration requirements of Ontario securities law, contrary to section 25 of the Act and to the public interest?

[96] Staff alleges that, in late spring 1998, Tibollo solicited funds for Sussex Group's operations through the sale to Ontario investors of shares in Sussex International. Staff relies on the evidence of a meeting at an investor's house which took place in August 1998.

[97] Further, in oral final arguments, Staff argued that Tibollo solicited funds "even outside of the Saxton channel". Regarding the latter argument, Staff relied on the evidence of a meeting in Montreal with a business person, Demetrius Manolakos.

August 6, 1998 Meeting at John Haverkamp's House

[98] A meeting took place at John Haverkamp's house on August 6, 1998. The meeting was attended by John Haverkamp, Bonnie Haverkamp, Peter Haverkamp, Eric Haverkamp, Fangeat, Latam, and Tibollo. At the invitation of John Haverkamp, Larry and Nancy Sheltro, business partners of John Haverkamp, also attended the meeting. Neither the Sheltros nor Peter Haverkamp were Saxton investors at the time of the meeting.

[99] The meeting was called by Fangeat on behalf of John Haverkamp, a Saxton investor who requested the meeting to learn more about the Cuban business.

[100] Tibollo testified that he understood that he was attending the meeting to provide updates on the operations in Cuba, and that by this time, he had a good understanding of the companies' operations. He testified that he spoke about what was happening in Cuba, who was investing there, and the types of investment opportunities people were taking advantage of in Cuba. He did not recall mentioning any requirements for monies for the printing press or talking about a general need for funds.

[101] John Haverkamp testified that Tibollo reported that the Cuban operation was progressing well and spoke about his close ties with the Cuban government. Tibollo did not mention any problems or weaknesses with the Cuban business. He testified that following the meeting, he did not remove any money from Saxton because it appeared that everything was "on-stream and it had good potential".

[102] Eric Haverkamp testified that Tibollo indicated that he was not there to speak about Saxton or its problems and that those matters were not necessarily a concern to investors or prospective investors because the Cuban operations were still very viable, and the ultimate return on investments

necessary information to perform his duties.

would come from these operations. While there was no specific invitation to invest, Eric Haverkamp testified that the need for additional capital to complete the printing press was “laid before the people”. Eric Haverkamp had invested in Saxton and knew that Saxton was encountering serious issues before meeting with Tibollo. Eric Haverkamp testified that he knew of the risks and took them. He also testified that he knew that Saxton was no longer viable, that it had all “blown up”.²⁹

[103] Eric Haverkamp testified that he was impressed with Tibollo and concluded from the meeting that he still had a good probability of seeing some return on his investment. Although he did not make any additional investment in Saxton, following the meeting, his father, Peter Haverkamp, invested \$70,000 in Sussex International.³⁰

[104] John Haverkamp testified that he invested \$25,000 in Sussex International on July 2, 1998.³¹ He also testified that he was introduced to Sussex International through Fangeat. He said that Sussex International was investing funds in a printing press in Havana, which was a joint venture with the Cuban government. However, he also testified that he met Tibollo for the first time on August 6, 1998, following his investment in Sussex International.³²

Meeting with Demetrius Manolakos

[105] As to the argument that Tibollo solicited funds “even outside of the Saxton channel”, at a meeting with an individual in Montreal, we note that this argument is made in connection with an allegation that had not been set out in the amended statement of allegations dated August 6, 2005.

[106] Our review of the evidence is that on April 1, 1998, Tibollo as President of Sussex Group, met with an individual named Demetrius Manolakos (“Manolakos”) in Montreal. At first, Tibollo did not recall meeting with this individual, but conceded that, based on the letter, it was possible. Tibollo then confirmed that he spoke with Manolakos about the Cuban operations (the juice and beer businesses and printing press). When asked whether he suggested to Manolakos that he may wish to invest in the Cuban operations, Tibollo responded that they spoke about investment opportunities in Cuba generally.

[107] In a letter addressed to Manolakos dated April 13, 1998 Tibollo wrote:

Given our relationships, we are confident that we can introduce you and your associates to these and numerous other investment opportunities in Cuba.

[108] Even if we were prepared to consider the evidence in support of an allegation which had not been expressly set out in the amended statement of allegations dated August 6, 2005, we find the evidence unconvincing to say the least. The evidence is neither informative of the purpose of the

²⁹ Transcript dated September 13, 2005 at p. 635.

³⁰ Transcript dated September 13, 2005 at pp. 634-635.

³¹ Transcript dated September 12, 2005 at p. 486.

³² Transcript dated September 12, 2005 at p. 503.

meeting with Manolakos nor of the nature of the funds that were allegedly being solicited by Tibollo.

Findings Regarding Trading and Advising of Saxton securities and Trading of Sussex International securities

[109] After a careful review of the evidence, we conclude that the evidence does not clearly support the allegations that Tibollo was engaged in trading and advising of Saxton securities and in trading of Sussex International securities.

[110] Unlike the circumstances in *Hrappstead* referred to above, Tibollo did not prepare or disseminate any materials in relation to the Saxton securities. Secondly, Tibollo did not prepare any forms of agreement for signature by investors, and was not involved in a direct way with the sale of Saxton securities. Thirdly, there is no clear evidence that Tibollo met with individual investors in a one-on-one basis to discuss the purchase or sale of securities, although he did meet in small group sessions.

[111] Fourthly, but most importantly, is the issue of Tibollo's attendance at investor and salesperson information sessions. Although Tibollo did attend information sessions for investors, his conduct can be distinguished from Hrappstead's. Hrappstead held investor information sessions where he presented attendees with lengthy information materials, which described the process by which an investment was to be made, and he no doubt actively promoted the particular investment scheme he was offering. In contrast, while Tibollo was present at various information sessions, his actions were more akin to providing advice and updates on the business operations in Cuba. Tibollo's contribution at these meetings could more properly be described as informational rather than promotional. Tibollo testified that his attendance at meetings was always to update investors and shareholders of the company.³³

[112] We were unable to find that Tibollo solicited the sale of, and encouraged the investment (or continued investment) in, Saxton securities to Saxton sales representatives, prospective investors and investors, or that he solicited the sale and encouraged the investment in Sussex International securities. Rather, Tibollo was conducting his duties as a business consultant to Sussex Admiral through his company Islazul. Later, he served as the president of Sussex Group. These duties included providing information to investors and salespeople on the Cuban operations.

[113] Although his conduct at meetings did not amount to an "act in furtherance of a trade" or to "advising", his participation at meetings may have provided comfort to potential investors and existing investors with respect to their investment and may have facilitated the raising of the funds. Investors and salespeople may have relied on him to obtain information about the Cuban operations. It is regrettable that Tibollo did not recognize the potential impact that his activities would have on investors. It is also regrettable that Tibollo failed to address the implications that the securities law issues would ultimately have on the investors.

³³ Transcript dated September 13, 2005 at p. 768.

[114] We are of the view that, based on the evidence presented and the circumstances of this case, the information Tibollo gave to sales representatives, prospective investors and investors with respect to the business operations in Cuba did not amount to advising, trading or participating in the furtherance of a trade.

C. Did Tibollo make inaccurate or misleading representations to Saxton investors and salespeople, contrary to section 38 and to the public interest?

[115] Staff submits that Tibollo made inaccurate or misleading representations to Saxton investors and salespeople. Staff argues that by virtue of his professional credentials, the importance of his political connections in Cuba, and his integral involvement with the Cuban operations and Saxton management in Ontario, salespeople and investors relied on his representations respecting the nature and the security and value of their investment in Saxton. Staff submits that Tibollo knew that Saxton was communicating to investors that the so-called market value of their investment was increasing as a result of the success and profitability of the Cuban operations. According to Staff, these representations were false or at best extremely misleading.

[116] Further, Staff submits that Tibollo was silent when it came to discussing any difficulty with the Cuban operations and that his silence had the effect of reassuring investors. According to Staff, there was no evidence that Tibollo gave any qualifications to his representations at meetings with potential investors and investors.

[117] The evidence demonstrated that as soon as Tibollo became president, he directed that financial statements be prepared for the Cuban operations. Tibollo testified that he never saw any financial statements of Saxton nor any documents sent to Saxton investors.³⁴

[118] Staff failed to establish that Tibollo knew that Sussex Group was operating at a loss. Hence, the information provided at the time to Saxton investors and salespeople by Tibollo regarding the Cuban operations did not represent inaccurate or misleading representations. As established by the evidence, the first financial statements were released on June 15, 1998. Tibollo reported in his executive summary dated September 30, 1998 that net earnings in 1998 were \$139,000 and \$425,000 in 1999.

[119] In light of the foregoing, we were unable to make a finding that Tibollo made inaccurate or misleading representations to Saxton investors and salespeople.

D. Did Tibollo engage in the illegal distributions of Saxton securities and of Sussex International securities, contrary to section 53 of the Act and to the public interest?

[120] Staff submits that Tibollo engaged in the illegal distributions of Saxton securities and of Sussex International securities and that the sales of shares of Saxton securities constituted trades in

³⁴ Transcript dated September 13, 2005 at pp. 767-768.

securities of an issuer that had not been previously issued. None of the offering corporations filed a preliminary prospectus, a prospectus, an offering memorandum, or a Form 20 with the Commission.

[121] Tibollo did not deny that he attended meetings in October and December 1997 and in the summer of 1998 with Saxton salespeople and investors to provide them with updates about the Cuban operations. However, he testified that he was not aware that Saxton was raising more funds from investors following the meeting with Myers.³⁵

[122] Considering the evidence in its entirety, we are unable to make a finding that Tibollo engaged in the illegal distributions of Saxton securities and of Sussex International securities.

Conclusion

[123] Our role is not to censure or suspend Tibollo as a lawyer, nor are we to judge the adequacy of his business conduct. That was not the essence of the allegations against Tibollo; the allegations were that he engaged in illegal distributions and unregistered trading and advising. There were nevertheless some disturbing aspects to his behaviour. Although we determined that he did not solicit the sale of Saxton or Sussex International securities, he, as the president of Sussex Group from November 1997 until 2000, knew by virtue of his meetings with two lawyers in the summer of 1997, about the illegality of the sales of Saxton securities and that Eizenga had not complied with securities law in raising funds that were used for the Cuban operations.

[124] However, we are not able to conclude that his conduct amounted to acts in furtherance of a trade or that his conduct warrants us to ban him from acting as an officer or director of any company. We do not believe that the Commission is the forum to reprimand him for possible inappropriate conduct that may have been tangential to the conduct of others.

[125] For the reasons discussed, we are not satisfied that:

- (a) Tibollo engaged in trading and advising, of Saxton securities, without being registered with the Commission and with no available exemption from the registration requirements of Ontario securities law, contrary to section 25 of the Act and to the public interest.
- (b) Tibollo engaged in trading of Sussex International securities, without being registered with the Commission and with no available exemption from the registration requirements of Ontario securities law, contrary to section 25 of the Act and to the public interest.
- (c) Tibollo made inaccurate or misleading representations to Saxton investors and salespeople, contrary to section 38 and to the public interest.

³⁵ Transcript dated September 13, 2005 at p. 786.

(d) Tibollo engaged in the illegal distributions of Saxton securities and of Sussex International securities, contrary to section 53 of the Act and to the public interest.

[126] For these reasons, the Allegations against Tibollo are dismissed.

Dated at Toronto this 11th day of January, 2006.

“Wendell S. Wigle”

Wendell S. Wigle

“Suresh Thakrar”

Suresh Thakrar

“Paul K. Bates”

Paul K. Bates