



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 VINCENZO (VINCENT) SIRIANNI

**REASONS AND DECISION
(Subsections 127(1) and 127(10) of the Act)**

Decision: November 5 , 2013

Panel: James E. A. Turner - Vice-Chair

Counsel: Harald Marcovici - For Staff of the Commission

TABLE OF CONTENTS

I.	OVERVIEW	1
II.	FINDINGS OF THE ALBERTA SECURITIES COMMISSION	2
III.	ANALYSIS	3
A.	SUBSECTION 127(10) OF THE ACT	3
B.	SUBMISSIONS OF THE PARTIES	4
D.	SHOULD AN ORDER BE IMPOSED?	5
E.	THE APPROPRIATE RESTRICTIONS	6
IV.	CONCLUSION	9

Schedule “A” – Form of Order

REASONS FOR DECISION

I. OVERVIEW

[1] This was a hearing (the "**Hearing**") conducted in writing before the Ontario Securities Commission (the "**Commission**") pursuant to subsections 127(1) and 127(10) 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 market conduct restrictions against Vincenzo (Vincent) Sirianni (the "**Respondent**" or "**Sirianni**").

[2] A Notice of Hearing in this matter was issued by the Commission on June 25, 2013 and a Statement of Allegations was filed by Staff of the Commission ("**Staff**") on June 24, 2013. Both the Notice of Hearing and the Statement of Allegations were duly served on the Respondent.

[3] On July 9, 2013, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondent was duly served with that application but did not appear at the application hearing or make any submissions.

[4] The Commission granted Staff's application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff filed written submissions, a hearing brief and a brief of authorities. The Respondent did not appear and did not file any responding materials.

Facts

[6] In November 2011, Sirianni entered into a Statement of Admissions and Joint Recommendation as to Sanction with the Alberta Securities Commission (the "**ASC**") (the "**Joint Statement**").

[7] Sirianni is subject to an order made by the ASC dated December 8, 2011 (the "**ASC Order**") that imposes sanctions, conditions, restrictions or requirements on him.

[8] In its findings on liability dated December 8, 2011 (the "**Findings**"), a panel of the ASC (the "**ASC Panel**") found that Sirianni engaged in illegal distributions of securities contrary to subsection 110(1) of the *Alberta Securities Act*, R.S.A. 2000, c. S-4 (the "**ASA**"). The ASC Panel also found that Sirianni made materially misleading or untrue statements, contrary to section 92(4.1) of the ASA, and that Sirianni perpetrated a fraud, contrary to section 93(b) of the ASA.

[9] The conduct for which Sirianni was sanctioned occurred between July and December 2010 (the "**Material Time**").

[10] During the Material Time, Sirianni was a resident of Calgary, Alberta. Sirianni registered the trade name Explora Energy ("**Explora**"), a non-existent entity purported to carry on business as an oil and gas production company.

[11] Staff relies on subsection 127(10)4 of the Act, which permits the Commission to make an order under subsections 127(1) or 127(5) of the Act in respect of a person or company who is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company (see paragraph [15] of these reasons).

[12] These are my reasons for the market conduct restrictions I impose pursuant to subsections 127(1) of the Act in reliance on subsection 127(10) of the Act.

II. FINDINGS OF THE ALBERTA SECURITIES COMMISSION

[13] In its reasons, the ASC Panel found the following:

- (a) Sirianni illegally distributed securities of Explora without filing a prospectus and without an available prospectus exemption, contrary to section 110(1) of the ASA;
- (b) Sirianni made statements that he knew were materially misleading or untrue and would reasonably be expected to have a significant effect on the market price or value of the Explora securities, contrary to section 92(4.1) of the ASA; and
- (c) Sirianni engaged or participated in conduct relating to the Explora securities that he knew would perpetrate a fraud on investors, contrary to section 93(b) of the ASA.

The ASC Order

[14] The ASC Order imposed the following sanctions, conditions, restrictions or requirements upon Sirianni:

- (a) pursuant to subsections 198(1)(b) and (c) of the ASA, Sirianni cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, permanently, except that [the ASC Order] does not preclude him from trading in or purchasing mutual funds or exchange-traded funds through a registrant (who has first been given a copy of [the ASC Order]) in a registered retirement savings plan, tax-free savings account or registered education savings plan (each as defined in the *Income Tax Act* (Canada)) for the benefit of one or more of Sirianni, his spouse and his children;
- (b) pursuant to subsections 198(1)(d) and (e) of the ASA, Sirianni resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, and is permanently prohibited from becoming or acting as a

director or officer (or both) of any issuer, registrant or investment fund manager;

- (c) pursuant to subsection 198(1)(e.3) of the ASA, Sirianni is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- (d) pursuant to section 199 of the ASA, Sirianni pay an administrative penalty of \$180,000; and
- (e) pursuant to section 202(1) of the ASA, Sirianni pay \$9,000 towards the cost of the investigation.

III. ANALYSIS

A. SUBSECTION 127(10) OF THE ACT

[15] Subsection 127(10) of the Act provides as follows:

127 (10) Inter-jurisdictional enforcement – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

...

4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.

5. The person or company has agreed with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements.

[16] The ASC Order makes Sirianni subject to an order of the ASC that imposes sanctions, conditions, restrictions or requirements on him, within the meaning of paragraph 4 of subsection 127(10) of the Act.

[17] Based on the terms of the Joint Statement, it is apparent that Sirianni agreed with the ASC to be made subject to sanctions, conditions, restrictions or requirements, thereby satisfying the threshold criteria set out in paragraph 5 of subsection 127(10) of the Act.

[18] Based on the findings in paragraphs 16 and 17 of these reasons, the Commission is entitled to make one or more orders under subsections 127(1) or 127(5) of the Act, if in its opinion it is in the public interest to do so.

[19] In *Re Euston Capital Corp.* (2009), 32 OSCB 6313 (“*Euston Capital*”), the Commission concluded that subsection 127(10) can be the grounds for an order in the public

interest under subsection 127(1) of the Act, based on a decision and order made in another jurisdiction:

... we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario's capital markets.

(*Euston Capital, supra*, at para. 26)

[20] I therefore find that I have the authority to make a public interest order against the Respondent under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act, based on the ASC Order and the Joint Statement.

[21] I must determine whether, based on the ASC Order, the market conduct restrictions proposed by Staff would be in the public interest. An important consideration is that the respondent's conduct would have constituted a breach of the Act and/or would have been considered to be contrary to the public interest if the conduct occurred in Ontario. (*JV Raleigh Superior Holdings Inc., Re* (2013), 36 OSCB 4639 at para. 16 (“*JV Raleigh*”))

B. SUBMISSIONS OF STAFF

[22] In order to protect Ontario investors and capital markets, Staff submits that it is in the public interest for the Commission to impose market conduct restrictions on the Respondent consistent with the sanctions imposed by the ASC pursuant to the ASC Order.

[23] Staff requests the following sanctions against Sirianni:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by him cease permanently, except that this order does not preclude him from trading in or purchasing mutual funds or exchange-traded funds through a registrant (who has first been given a copy of the decision of the ASC Order) in a registered retirement savings plan, tax-free savings account or registered education savings plan (each as defined in the *Income Tax Act* (Canada)) for the benefit of one or more of Sirianni, his spouse and his children;
- (b) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to him permanently;
- (c) pursuant to paragraph 7 of subsection 127(1) of the Act, he resign any positions that he holds as a director or officer of an issuer;
- (d) pursuant to paragraph 8 of subsection 127(1) of the Act, he be prohibited permanently from becoming or acting as an officer or director of an issuer;
- (e) pursuant to paragraph 8.1 of subsection 127(1) of the Act, he resign any positions that he holds as a director or officer of a registrant;

- (f) pursuant to paragraph 8.2 of subsection 127(1) of the Act, he be prohibited permanently from becoming or acting as an officer or director of a registrant;
- (g) pursuant to paragraph 8.3 of subsection 127(1) of the Act, he resign any positions that he holds as a director or officer of an investment fund manager; and
- (h) pursuant to paragraph 8.4 of subsection 127(1) of the Act, he be prohibited permanently from becoming or acting as an officer or director of an investment fund manager.

[24] Staff submits that I am entitled to issue an order imposing those market conduct restrictions based solely on the evidence before me, which consists of the ASC Order and the Joint Statement.

D. SHOULD AN ORDER BE IMPOSED?

[25] When exercising the 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.

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

[27] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged 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).

[28] 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.

[29] While the Commission must make its own determination of what is in the public interest, it is important that the Commission recognize the increasingly complex and cross-jurisdictional nature of securities markets. (*JV Raleigh, supra*, at paras. 21-26, and *New Futures Trading International Corp.* (2013), 36 OSCB 5713 at paras. 22-27)

[30] In imposing the market conduct restrictions in this matter, I am relying on the ASC Order. In my view, it is not appropriate in doing so to revisit or second-guess the ASC's findings.

[31] I find that it is necessary to protect Ontario investors and the integrity of Ontario's capital markets to impose market conduct restrictions against the Respondent in the public interest.

E. THE APPROPRIATE RESTRICTIONS

[32] In determining the nature and duration of the appropriate market conduct restrictions, I must consider all of the relevant facts and circumstances before me, including:

- (a) the seriousness of the Respondent's conduct and breaches of the ASC Act;
- (b) the harm to investors;
- (c) whether or not the restrictions imposed may serve to deter the Respondent from engaging in similar abuses of Ontario investors and Ontario capital markets; and
- (d) the effect any Ontario restrictions may have on the ability of the Respondent to participate without check in Ontario capital markets.

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

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

- (a) the Respondent was found by a panel of the ASC to have breached Alberta securities law and to have perpetuated a fraud on investors;
- (b) the conduct for which the Respondent was sanctioned in the ASC Order would constitute a contravention of Ontario securities law if it had occurred in Ontario, specifically contraventions of subsections 53(1), 126.2(1) and section 126.1 of the Act.

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

[35] I have reviewed the Commission and other decisions on sanctions referred to me by Staff in assessing the market conduct restrictions appropriate in this case. In reviewing those 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).

[36] In *British Columbia (Securities Commission) v. McLean* (2011) BCCA 455 (“*McLean*”) the British Columbia Court of Appeal held that when reciprocating an order originally made in Ontario, the British Columbia Securities Commission has a duty to provide reasons, however brief, for the sanctions it was imposing and why they were in the public interest. (*McLean, supra*, at paras. 28-29).

[37] In *Lines v. British Columbia (Securities Commission)*, (2012) BCCA 316 (“*Lines*”), the British Columbia Court of Appeal interpreted *McLean, supra*, as holding that the Commission “must make its own determination of the public interest under s. 161 [section 127 of the Act], rather than make an order automatically based on the order of the foreign jurisdiction” (*Lines, supra*, at para. 31).

[38] The Commission held in *Elliott, Re* that “subsection 127(10) ... allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest.”

(*Elliott, Re* (2009), 23 OSCB 6931 at para. 24 (“*Elliott*”))

[39] While the Commission may rely on the findings of the other jurisdiction, it must then satisfy itself that an order is necessary to protect the public interest in Ontario:

The applicability of subsection 127(10) to the BCSC Order and the Settlement Agreement does not automatically lead to the conclusion that this Panel must make an order similar to that made by the BCSC against Elliott. Rather, we must first consider whether or not sanctions are necessary to protect the public interest, before exercising any powers granted to us under subsections 127(1) and (5), and second, if necessary, consider what the appropriate sanctions should be.

(*Elliott, supra*, at para. 27)

[40] In matters such as this, the Commission has relied on the findings made in other jurisdictions and has not required a direct connection of the misconduct to Ontario or Ontario capital markets (*Weeres, Re* (2013), 36 OSCB 3608 and *Shantz (Re)* (2013), 36 OSCB 5993).

[41] Staff submits that the market conduct restrictions imposed in the ASC Order are appropriate to the misconduct by the Respondent and serve as both specific and general deterrence. Staff further submits that a protective order imposing market conduct restrictions on the Respondent, substantially similar to those imposed by the ASC Order, are appropriate to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondent.

[42] It should be noted that under the ASC Order, Sirianni is permitted to “trade and purchase mutual funds or exchange-traded funds through a registrant (who has first been given a copy of the Order) in a registered retirement savings plan, tax-free savings account or registered education savings plan for the benefit of one or more of Sirianni, his spouse and his children” (the “**Carve out**”). I am prepared to impose market conduct restrictions subject to the Carve out in order to mirror the ASC Order.

[43] Sirianni admitted to breaching two of the cornerstones of the regulatory framework of the ASA: engaging in illegal distribution of securities and making materially misleading or untrue statements.

[44] Sirianni further admitted to perpetrating a fraud on investors. In its findings, the ASC Panel noted the following in respect of Sirianni's conduct:

Sirianni's misconduct has harmed identifiable investors financially and has understandably shaken their confidence in the integrity of our capital market. His actions have also harmed the reputation of Alberta's capital market and have jeopardized investor confidence in the integrity of that market.

(*ASC Decision* at paras. 3-4 and 6-7)

[45] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following market conduct restrictions on Sirianni:

- (a) trading in any securities by Sirianni cease permanently, except that this order does not preclude him from trading in or purchasing mutual funds or exchange-traded funds through a registrant (who has first been given a copy of the ASC Order) in a registered retirement savings plan, tax-free savings account or registered education savings plan (each as defined in the *Income Tax Act* (Canada)) for the benefit of one or more of Sirianni, his spouse and his children;
- (b) any exemptions contained in Ontario securities law do not apply to Sirianni permanently;
- (c) Sirianni resign any positions that he holds as a director or officer of an issuer;
- (d) Sirianni be prohibited permanently from becoming or acting as an officer or director of an issuer;
- (e) Sirianni resign any positions that he holds as a director or officer of a registrant;
- (f) Sirianni be prohibited permanently from becoming or acting as an officer or director of a registrant;
- (g) Sirianni resign any positions that he holds as a director or officer of an investment fund manager; and

- (h) Sirianni be prohibited permanently from becoming or acting as an officer or director of an investment fund manager.

IV. CONCLUSION

[46] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule “A” hereto.

DATED at Toronto this 5th day of November, 2013.

“James E. A. Turner”

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 VINCENZO (VINCENT) SIRIANNI

ORDER (Subsections 127(1) and 127(10))

WHEREAS on June 25, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Vincenzo (Vincent) Sirianni (the "Respondent" or "Sirianni");

AND WHEREAS on June 24, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in this matter;

AND WHEREAS in November 2011, Sirianni entered into a Statement of Admissions and Joint Recommendation as to Sanction with the Alberta Securities Commission (the "ASC");

AND WHEREAS the Respondent is subject to an order dated December 8, 2011 made by the ASC that imposes sanctions, conditions, restrictions or requirements upon him within the meaning of paragraph 4 of subsection 127(10) of the Act (the "ASC Order");

AND WHEREAS on July 9, 2013, the Commission granted Staff's application to convert this matter to a written hearing in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS Sirianni did not appear and did not file any materials;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) 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 Sirianni cease permanently, except that this order does not preclude Sirianni from trading in or purchasing mutual funds or exchange-traded funds through a registrant (who has first been given a copy of the ASC Order) in a registered retirement savings plan, tax-free savings account or registered education savings plan (each as defined in the *Income Tax Act* (Canada)) for the benefit of one or more of Sirianni, his spouse and his children;
- (b) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Sirianni permanently;
- (c) pursuant to paragraph 7 of subsection 127(1) of the Act, Sirianni resign any positions that he holds as a director or officer of an issuer;
- (d) pursuant to paragraph 8 of subsection 127(1) of the Act, Sirianni be prohibited permanently from becoming or acting as an officer or director of an issuer;
- (e) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Sirianni resign any positions that he holds as a director or officer of a registrant;
- (f) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Sirianni be prohibited permanently from becoming or acting as an officer or director of a registrant;
- (g) pursuant to paragraph 8.3 of subsection 127(1) of the Act, Sirianni resign any positions that he holds as a director or officer of an investment fund manager; and
- (h) pursuant to paragraph 8.4 of subsection 127(1) of the Act, Sirianni be prohibited permanently from becoming or acting as an officer or director of an investment fund manager.

DATED at Toronto this 5th day of November, 2013.

“James E. A. Turner”

James E. A. Turner