



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
NEIL SURESH CHANDRAN, ENERGY TV INC., CHANDRAN HOLDING MEDIA,
INC., also known as CHANDRAN HOLDINGS & MEDIA INC., and NEIL SURESH
CHANDRAN doing business as CHANDRAN MEDIA**

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

Hearing: In writing

Decision: March 4, 2016

Panel: Janet Leiper, C.S. - Commissioner

Submissions by: Clare Devlin - For Staff of the Commission
Christina Galbraith (student-at-law)

No one appeared on behalf of Neil Suresh Chandran, Energy TV Inc., Chandran Holding Media, Inc., also known as Chandran Holdings & Media Inc., and Neil Suresh Chandran doing business as Chandran Media

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REASONS AND DECISION

I. INTRODUCTION

- [1] This was an uncontested written hearing before the Ontario Securities Commission (the "Commission") to determine whether it is in the public interest to make an order imposing sanctions against Neil Suresh Chandran ("Mr. Chandran"), Energy TV Inc. ("TV"), Chandran Holding Media, Inc., also known as Chandran Holdings & Media Inc. ("Holdings"), and Neil Suresh Chandran doing business as Chandran Media ("Chandran Media") (collectively, "the Respondents"), pursuant to the authority found in subsections 127(1) and (10) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "*Securities Act*").
- [2] The Respondents are subject to an order of the Alberta Securities Commission (the "ASC") and Staff of the Commission have requested that the Commission consider imposing a protective order in the public interest under the *Securities Act* as a result.
- [3] The Respondents were served with the Notice of Hearing issued on November 17, 2015, a Statement of Allegations dated November 16, 2015 and disclosure consisting of copies of the ASC order dated May 19, 2015, a Statement of Admissions and Joint Recommendation as to Sanction between the ASC and the Respondents (the "Statement") as well as corporation profile reports and section 139 certificates showing no record of the Respondents being registered under the *Securities Act*.
- [4] On December 16, 2015, Staff of the Commission brought an application to convert the matter to a written hearing, as permitted by the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168. The Respondents did not attend or make submissions on that date. Mr. Chandran requested that Staff convey his request to have the matter adjourned so that he could obtain counsel. On December 16, 2015, Staff not objecting, the matter was adjourned to January 11, 2016 to be spoken to on that date and for Mr. Chandran to advise of any retainer of counsel.
- [5] Staff took steps to serve the Respondents with the Commission's order dated December 16, 2015. On January 11, 2016, the matter came back before the Commission. Mr. Chandran advised Staff that he would not be attending the hearing on that day. The Respondents did not appear or make submissions. On the application of Staff, this matter was converted to a written hearing and a timeline was set for filing materials with the Commission and the exchange of materials between Staff and the Respondents. None of the Respondents filed materials although provided with notice and time to do so.
- [6] A tribunal may proceed in the absence of a party where that party has been given notice of the hearing (Subsection 7(2), *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "*SPPA*"). The affidavits of service filed in these proceedings, Mr. Chandran's communications with Staff in December of 2015 about the matter and the service by Staff on Mr. Chandran and all the Respondents prior to January 11, 2016 satisfy me that the matter may proceed in the absence of the Respondents in accordance with the *SPPA*.

II. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

- [7] The *Securities Act* provides for inter-jurisdictional enforcement where another securities regulatory authority has imposed “sanctions, conditions, restrictions or requirements on a person or a company” (s. 127(10) 4). On receiving evidence of the fact of such orders, the Commission must determine whether, based on this finding, an order under subsection 127(1) of the *Securities Act* should be made.
- [8] Subsection 127(1) empowers the Commission to make orders where in its opinion, it is in the public interest to make such orders. In making this determination, the Commission has regard to the purposes of the *Securities Act*, which are to provide protection to investors from unfair, improper and fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets.
- [9] The purpose of orders under subsection 127(1) of the *Securities Act* is “protective and prospective” and such orders are made to restrain potential conduct which could be detrimental to the public interest in fair and efficient capital markets. (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43 cited in *Re JV Raleigh Superior Holdings Inc.* (2013), 36 O.S.C.B. 4639 para. 17).

III. EVIDENCE AND ANALYSIS

A. The ASC Order

- [10] On May 19, 2015, the ASC made an order against the Respondents finding liability in respect of the *Alberta Securities Act*, R.S.A. 2000, c. S-4 (the “ASA”). The ASC made its findings and imposed sanctions on the basis of admissions made by the Respondents in the Statement.
- [11] The ASC found that each of the Respondents:
- a. engaged in the illegal distribution of securities, contrary to section 110 of the ASA;
 - b. engaged in unregistered trading contrary to subsection 75(1)(a) of the ASA;
 - c. failed to file reports of exempt distribution, contrary to section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*.
- [12] The ASC also found that TV and Holdings made prohibited representations to investors, contrary to subsection 92(1)(b) of the ASA. The Panel further found that all of the above conduct was contrary to the public interest.
- [13] The background to the findings of misconduct by the Respondents can be found in the reasons of the ASC in *Re Chandran* 2015 ABASC 717 (the “ASC Decision”). Briefly, Mr. Chandran and the corporate Respondents collectively operated a media production business. At its peak period, the business employed up to 100 people on a payroll in excess of \$5 million over two years. Mr. Chandran used Chandran Media as the name under which he carried on business in Alberta. At the material times, he was the guiding mind of TV and Holdings.

- [14] The Alberta business faltered in 2008-2009 and its Canadian operations were wound down. During the period from March 1, 2007 to June 30, 2009, the Respondents raised approximately \$39 million from "at least 210 investors" who were mostly resident in Alberta. The Respondents did this by selling shares (of either or both of TV and Holdings), entering into loan agreements and other various arrangements and instruments with investors which offered attractive rates of return.¹ Most of the investors lost their money.
- [15] At the proceedings before the ASC, the Respondents admitted that the instruments and agreements constituted "securities" for the purposes of the ASA. No preliminary or final prospectuses were ever filed or receipted for TV, Holdings or Chandran Media and exemptions were not available for most of the trades in these securities. None of the Respondents were registered under the ASA. The ASC found that all the Respondents engaged in an illegal distribution of securities and unregistered trading, contrary to the ASA.
- [16] Mr. Chandran admitted that he "authorized, permitted or acquiesced" in all of the misconduct of TV, Holdings and Chandran Media. The ASC found that each Respondent traded and distributed securities without registration and a prospectus and in some (but not all) cases, without exemptions. The ASC also found breaches in relation to failures to file exempt distribution reports, which are required for reliance on certain exemptions. The ASC further found that TV and Holdings made prohibited representations by offering investors a refund of the purchase price paid for the securities.
- [17] The ASC considered the importance of registration and prospectus requirements for protecting investors and fostering fair and efficient public capital markets. These essential requirements go to the foundations to fair markets, as;
- a. registration provides protection through the involvement of persons knowledgeable about the capital market, securities in question and an investor's circumstances, investment objective and risk tolerances, and
 - b. a prospectus includes disclosure to assist investors in making informed investment decisions.
- Multiple breaches of the registration and prospectus requirements expose investors to ill-informed decision making and unforeseen risks of loss. The combination of unprotected investors and inadequate disclosure jeopardizes public confidence in the capital market. The conduct of the Respondents was found to have been contrary to the public interest.
- [18] The ASC also noted that Mr. Chandran had previously been the subject of an order in 2006 by California regulatory authorities "to desist and refrain from offering and selling securities" thus putting him on notice of the need to adhere to securities regulation.
- [19] Accordingly, on May 19, 2015, the ASC made the following orders in the public interest:

¹ These arrangements were described variously as "Factoring," "Production Partner," "Managed Licensee," "Event Sponsorship Agreements," or "Episodic Production Debentures." (see ASC Decision at para. 11)

- a. In respect of Chandran:
- under sections 198(1)(b) and (c) of the [ASA], he must cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, permanently, except that these orders do not preclude him from trading in or purchasing securities through a registrant (who has first been given copies of this decision and the Statement) in registered retirement savings plans, registered retirement income funds, registered education savings plans or tax-free savings accounts (as defined in the Income Tax Act (Canada)) or in comparable plans, funds or accounts under United States income tax laws, operated in each case for the benefit of himself or one or more members of his immediate family;
 - under sections 198(1)(d) and (e), he must resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager, permanently;
 - under section 198(1)(e.1), he is prohibited from advising in securities or derivatives, permanently;
 - under section 198(1)(e.3), he is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, permanently; and
 - under section 199, he must pay an administrative penalty of \$400,000; and
- b. in respect of TV, Holdings, and Chandran Media:
- under section 198(1)(a), all trading in or purchasing of securities of any of them must cease, permanently;
 - under sections 198(1)(b) and (c), they must each cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to them, permanently; and
 - under sections 198(1)(e.2) and (e.3), they are each prohibited from becoming or acting as a registrant, investment fund manager or promoter, and from acting in a management or consultative capacity in connection with activities in the securities market, permanently.

[20] Staff have established that the Respondents are subject to an order made by a securities regulatory authority that imposed sanctions upon them, and thereby have established the threshold criteria set out in paragraph 4 of subsection 127(10) of the *Securities Act*.

B. The Order Requested in the Public Interest

[21] Staff have requested that the Commission rely on the inter-jurisdictional enforcement provisions in subsection 127(10) of the *Securities Act* and issue a protective order in the public interest. Section 127(10) of the *Securities Act* provides in part:

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.

Both of the criteria in 127(10) 4 and 5 have been established by Staff, and I rely on both the ASC order dated May 19, 2015 and the Statement which was signed by the Respondents and Executive Director of the ASC.

[22] In *Re Euston Capital Corporation* (2009), 32 O.S.C.B. 6313 the Commission concluded that a public interest order under subsection 127(1) of the *Securities Act* may be made on the basis of an order made in another jurisdiction. In determining whether an order should be made, regard should be had to the purpose of the *Securities Act*. Section 1.1 identifies the purposes of the *Securities Act* as being:

- a. to provide protection to investors from unfair, improper or fraudulent practices; and
- b. to foster fair and efficient capital markets and confidence in capital markets.

[23] Section 2.1 provides that “the integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.”

[24] Staff refer to the interconnected nature of Canadian markets and the capacity for communications across borders. Also, here one of the Respondents, TV, carried on business from offices in Toronto. Staff submits that the following factors favour making a public interest order in this case:

- a. the Respondents admitted, and were found by the ASC Panel, to have breached Alberta securities law and to have acted contrary to the public interest;
- b. the conduct for which the Respondents were sanctioned in the ASC Order would likely have constituted contraventions of Ontario securities law, including contraventions of subsections 25(1), 53(1) and 38(1) of the *Securities Act*;

- c. the terms of the proposed order are consistent with the fundamental principles that the Commission maintain high standards of fitness and business conduct to ensure honest and responsible conduct by market participants;
- d. the terms of the proposed order align with the sanctions imposed in the ASC Order to the extent possible under the *Securities Act*; and
- e. the sanctions proposed by Staff are prospective in nature, and would impact the Respondents only if they attempted to participate in the capital markets of Ontario.

[25] Based on the admissions, the nature of the misconduct and the findings of the ASC, and taking into account the interprovincial and international nature of the business operated by the Respondents, as well as the corporate connection to Ontario being that during the material time, TV raised capital from an office in Toronto (among other places), I conclude that an order ought to be made in the public interest pursuant to the authority provided in subsection 127(1) of the *Securities Act*.

IV. ADDITIONAL SANCTION REQUESTED BY STAFF

[26] In addition to seeking sanctions that are “substantially similar” to those imposed by the ASC, Staff seek a sanction in relation to Mr. Chandran that was not made in Alberta. Staff asks that an order be made permanently banning Mr. Chandran from becoming or acting as a registrant in Ontario. The rationale for this request is that the admissions and findings by the ASC amply establish that Mr. Chandran lacks the “requisite integrity necessary to hold positions of trust in the securities industry.”

[27] Further, Staff noted that the Commission has previously ordered a ban from becoming or acting as a registrant where the respondent undertook to “refrain from advising in securities or derivatives” in the originating jurisdiction (see for example *Re Mak* (2015), 38 O.S.C.B. 4715). While the *ASA* and *Securities Act* are not identical in wording, the ban on advising in Alberta and a ban from becoming or acting as a registrant in Ontario achieve the same outcome of restricting Mr. Chandran’s ability to deal with investors. Mr. Chandran was provided with Staff’s position in the materials sent to him and filed with the Commission and he did not provide any submissions in response on this point.

[28] Section 2.1 of the *Securities Act* includes among the fundamental principles to be considered by the Commission, “the maintenance of high standards and business conduct to ensure honest and responsible conduct by market participants.”

[29] The seriousness and scale of the breaches in this case, the prior order made against Mr. Chandran in California and the clear statement of principles in the *Securities Act* all weigh in favour of this additional sanction. The admissions made in Alberta do provide some evidence of recognition and remorse, given that the ASC did not have to prove each allegation. This cooperation however is outweighed by the other factors that include the recurring nature of the violations, the amounts raised from Canadian investors and the fact that there have been findings now in two different jurisdictions. There is a need to make an order that will deter and prospectively protect Ontario capital markets from similar conduct.

V. ORDER

[30] Having found that it is in the public interest to do so, I make the following order:

- a. Against Mr. Chandran:
 - i. pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, trading in any securities by Chandran shall cease permanently, except that he may trade securities through a registrant (who has first been given copies of the ASC Order dated May 19, 2015, the Statement and a copy of the Order of the Commission in this proceeding) in registered retirement savings plans, registered retirement income funds, registered education savings plans or tax-free savings accounts (as defined in the Income Tax Act (Canada)) or in comparable plans, funds or accounts under United States income tax laws, operated in each case for the benefit of himself or one or more members of his immediate family;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the *Securities Act*, acquisition of any securities by Chandran shall be prohibited permanently, except that he may acquire securities through a registrant (who has first been given copies of the ASC Order dated May 19, 2015, the Statement and a copy of the Order of the Commission in this proceeding), in registered retirement savings plans, registered retirement income funds, registered education savings plans or tax-free savings accounts (as defined in the Income Tax Act (Canada)) or in comparable plans, funds or accounts under United States income tax laws, operated in each case for the benefit of himself or one or more members of his immediate family;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the *Securities Act*, any exemptions contained in Ontario securities laws do not apply to Chandran, permanently;
 - iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the *Securities Act*, Chandran shall resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;
 - v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the *Securities Act*, Chandran shall be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the *Securities Act*, Chandran shall be prohibited permanently from becoming or acting as a registrant;

- b. Against TV, Holdings and Chandran Media:
- i. pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, trading in any securities of TV, Holdings and Chandran Media shall cease, permanently;
 - ii. pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, trading in any securities by TV, Holdings and Chandran Media shall cease, permanently;
 - iii. pursuant to paragraph 2.1 of subsection 127(1) of the *Securities Act*, acquisition of any securities by TV, Holdings and Chandran Media shall be prohibited, permanently;
 - iv. pursuant to paragraph 3 of subsection 127(1) of the *Securities Act*, any exemptions contained in Ontario securities laws do not apply to TV, Holdings and Chandran Media, permanently; and
 - v. pursuant to paragraph 8.5 of subsection 127(1) of the *Securities Act*, TV, Holdings and Chandran Media are each prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, permanently.

Dated at Toronto this 4th day of March, 2016.

"Janet Leiper"

Janet Leiper, C.S.