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Securities  
Commission

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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  
2241153 ONTARIO INC., SETENTERPRICE,  
SARBJEET SINGH, DIPAK BANIK,  
STOYANKA GUERENSKA, SOPHIA NIKOLOV  
and EVGUENI TODOROV**

**REASONS AND DECISION ON SANCTIONS AND COSTS  
(Sections 127 and 127.1 of the Act)**

**Hearing:** In writing

**Decision:** March 15, 2016

**Panel:** Alan J. Lenczner - Commissioner and Chair of the Panel  
Judith N. Robertson - Commissioner  
AnneMarie Ryan - Commissioner

**Submissions by:** Christie Johnson - For Staff of the Commission

No one made any submissions on behalf of Setenterprice, Dipak Banik, Stoyanka Guerenska, Sophia Nikolov or Evgueni Todorov

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## REASONS AND DECISION ON SANCTIONS AND COSTS

### I. INTRODUCTION

- [1] After a merits hearing, which the respondents did not attend, the panel made determinations that the respondents, except Nikolov, had breached subsections 25(1) and 53(1) of the *Act*; that the respondent, Todorov, had perpetrated a fraud on investors contrary to section 126(1)(b) of the *Act*; and that the respondents Nikolov and Todorov were found liable under section 129.2 of the *Act*.
- [2] This Sanctions Decision should be read in conjunction with the Decision of the Commission dated February 3, 2016 for a full appreciation of the conduct of each respondent and their breaches.
- [3] Staff has made written submissions setting forth its request for the appropriate sanctions, penalties and costs that should be imposed by the panel. Although served with Staff's submissions, the respondents have offered no response.
- [4] The purpose of sanctions is the prevention of future harm to investors. They are imposed not to punish past conduct *per se*, but to remove the opportunity for violators, in the future, from harming investors and from lowering the integrity of the capital markets.
- [5] The Supreme Court of Canada has held that it is appropriate for the Commission to consider specific and general deterrence in crafting sanctions which are designed to preserve the public interest. The Court stated that the "weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission."<sup>1</sup>
- [6] The evidence established that the respondents committed a series of acts that included unregistered trading and the illegal distribution of securities and that Todorov committed an ongoing course of deceitful and fraudulent conduct, all of which was part of a scheme to defraud investors. The conduct of the respondents caused significant harm to the integrity of the capital markets and deprived investors of their funds. The evidence established that the conduct of the respondents deprived investors of \$905,591. It is also noteworthy that this is the second time that Todorov has been found to have breached sections 25(1) and 53(1) of the *Act*. The Commission in *Re 219678 Ontario Ltd. (cob RARE INVESTMENTS)* found Todorov to have breached Ontario securities law and banned him permanently from accessing the securities markets in Ontario.

### II. TRADING AND MARKET BANS

- [7] The breaches by Todorov, Setenterprice, Guerenska and Banik strike at the most fundamental requirements of the *Act*, i.e. the duty to act honestly and with integrity, the registration of a person who trades in securities or acts in furtherance of a trade and the distribution of securities only after a prospectus has been receipted. These requirements serve to prevent fraud and other abuses of the capital market.

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<sup>1</sup> *Cartaway Resources Corp.* [2004] 1 SCR 672 at paras. 60 and 64

[8] None of these respondents showed even a minimal regard for the requirements of the *Act* or its safeguards for the public. None were registered in any capacity with the Commission. Their breaches were repeated and numerous. Nikolov permitted or acquiesced in these breaches by allowing her husband, Todorov, to use her company, Setenterprice's, bank account as the vehicle to harbour the funds he acquired by deceit from investors and to write cheques, amongst other things, for the couple's personal expenses.

[9] The nature of the breaches, the attitude of the respondents at the relevant times, and the failure of the respondents to justify their conduct, convince us that only significant bans from access to or use of public markets will protect investors. We therefore find that it is in the public interest to make the following orders:

**A. Todorov and Setenterprice**

- (a) pursuant to paragraph 2 of subsection 127(1), that trading in any securities by Todorov and Setenterprice cease permanently;
- (b) pursuant to paragraph 2.1 of subsection 127(1), that the acquisition of any securities by Todorov and Setenterprice is prohibited permanently;
- (c) pursuant to paragraph 3 of subsection 127(1), that any exemptions contained in Ontario securities law do not apply to Todorov and Setenterprice permanently;
- (d) pursuant to paragraph 6 of subsection 127(1), that Todorov be reprimanded;
- (e) pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1), that Todorov resign any positions he holds as a director or officer of any issuer, registrant, or investment fund manager;
- (f) pursuant to paragraphs 8, 8.2, and 8.4 of subsection 127(1), that Todorov be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager; and
- (g) pursuant to paragraph 8.5 of subsection 127(1) that Todorov be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

**B. Banik and Guerenska**

- (a) pursuant to paragraph 2 of subsection 127(1), that trading in any securities by Banik and Guerenska cease for 6 years;
- (b) pursuant to paragraph 2.1 of subsection 127(1), that the acquisition of any securities by Banik and Guerenska cease for 6 years;
- (c) pursuant to paragraph 3 of subsection 127(1), that any exemptions contained in Ontario securities law do not apply to Banik and Guerenska for 6 years;
- (d) pursuant to paragraph 6 of subsection 127(1), that Banik and Guerenska be reprimanded;

- (e) pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1), that Banik and Guerenska resign any positions they hold as a director or officer of any issuer, registrant, or investment fund manager;
- (f) pursuant to paragraphs 8, 8.2, and 8.4 of subsection 127(1), that Banik and Guerenska be prohibited for 6 years from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager; and
- (g) pursuant to paragraph 8.5 of subsection 127(1), that Banik and Guerenska be prohibited for 6 years from becoming or acting as a registrant, as an investment fund manager, or as a promoter.

**C. Nikolov**

- (a) pursuant to paragraph 2 of subsection 127(1), that trading in any securities by Nikolov cease for 10 years;
- (b) pursuant to paragraph 2.1 of subsection 127(1), that the acquisition of any securities by Nikolov cease for 10 years;
- (c) pursuant to paragraph 3 of subsection 127(1), that any exemptions contained in Ontario securities law do not apply to Nikolov for 10 years;
- (d) pursuant to paragraph 6 of subsection 127(1), that Nikolov be reprimanded;
- (e) pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1), that Nikolov resign any positions she holds as a director or officer of any issuer, registrant, or investment fund manager;
- (f) pursuant to paragraphs 8, 8.2, and 8.4 of subsection 127(1), that Nikolov be prohibited for 10 years from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager; and
- (g) pursuant to paragraph 8.5 of subsection 127(1), that Nikolov be prohibited for 10 years from becoming or acting as a registrant, as an investment fund manager, or as a promoter.

**III. DISGORGEMENT**

[10] Disgorgement orders pursuant to paragraph 10 of subsection 127(1) of the *Act* are appropriate to ensure that respondents do not benefit from their breaches of Ontario securities law.

[11] Each respondent received a monetary benefit from his/her breach of Ontario securities law: Todorov from his deceit of investors and unlawful trading; Setenterprice and Nikolov as the facilitators and recipients of ill-gotten monies; Banik by way of referral fees and other payments; and Guerenska by way of referral fees.

[12] We are of the opinion that the following disgorgement orders are appropriate:

**A. Todorov, Setenterprice and Nikolov**

- (a) pursuant to paragraph 10 of subsection 127(1), that Todorov and Setenterprice and Nikolov disgorge to the Commission \$747,323, on a joint and several basis, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*.

**B. Banik and Guerenska**

- (a) pursuant to paragraph 10 of subsection 127(1), that Banik disgorge to the Commission \$104,700, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*; and
- (b) pursuant to paragraph 10 of subsection 127(1), that Guerenska disgorge to the Commission \$53,568, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*.

**IV. ADMINISTRATIVE PENALTY**

[13] The Commission has held that an administrative penalty should be of a magnitude sufficient to ensure effective specific and general deterrence. Factors to be considered in determining an appropriate administrative penalty include: the scope and seriousness of a respondent's misconduct; whether there were multiple and/or repeated breaches of the *Act*; whether the respondent realized any profit as a result of his or her misconduct; the amount of money raised from investors; the harm caused to investors; and the level of administrative penalties imposed in other cases.<sup>2</sup>

[14] As stated earlier in this decision, this Commission, in *Re 219678 Ontario Ltd. (cob RARE INVESTMENTS)*, found Todorov to have breached Ontario securities law and banned him permanently from accessing the securities markets in Ontario. This case represents a second finding against him. Taking into consideration the conduct of each respondent, the various roles that each played in the scheme and subsequently, in particular the fact that Banik entered an Agreed Statement of Fact where he admitted his transgressions and provided evidence, and the need for both specific and general deterrence, the panel orders:

**A. Todorov and Setenterprice**

- (a) pursuant to paragraph 9 of subsection 127(1), that Todorov and Setenterprice pay an administrative penalty of \$300,000, on a joint and several basis, as a result of their non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*.

**B. Banik and Guerenska**

- (a) pursuant to paragraph 9 of subsection 127(1), that Banik and Guerenska each pay an administrative penalty of \$25,000 as a result of their non-

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<sup>2</sup> *Re Rowan* (2010), 33 OSCB 91 (OSC) at paras. 67, 73-74; *Limelight Entertainment Inc. (Re)* (2008), 31 OSCB 12030 (OSC) at paras. 67, 71, 78

compliance with Ontario securities law, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*.

**C. Nikolov**

- (a) pursuant to paragraph 9 of subsection 127(1), that Nikolov pay an administrative penalty of \$25,000 as a result of her non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the *Act*.

**V. COSTS**

[15] Section 127.1 of the *Act* provides the Commission the discretion to order a person or company to pay the costs of an investigation and/or hearing if the Commission is satisfied that the person or company has not complied with Ontario securities law or has not acted in the public interest.

[16] A costs order pursuant to section 127.1 of the *Act* is not a sanction but rather a means to recover the costs of an investigation and/or a hearing from persons or companies who have breached Ontario securities law or acted contrary to the public interest. As the Commission is a self-funded body, it is appropriate that the Commission's costs should be borne by those who have caused them to be incurred, rather than by capital market participants who comply with Ontario securities laws. A costs order will not necessarily lead to the recovery of all of the costs incurred by the Commission, but it is appropriate that respondents contribute to those costs when there has been a finding that they have contravened securities law.

[17] Rule 18.2 of the Commission's *Rules of Procedure* provides that the Commission may consider the following factors in determining the issue of costs under section 127.1:

- whether the respondent failed to comply with a procedural order or direction of the Panel;
- the complexity of the proceeding;
- the importance of the issues;
- the conduct of Staff during the investigation and during the proceeding, and how Staff's conduct contributed to the costs of the investigation and the proceeding;
- whether the respondent contributed to a shorter, more efficient, and more effective hearing, or whether the conduct of the respondents unnecessarily lengthened the duration of the proceeding;
- whether any step in the proceeding was taken in an improper, vexatious, unreasonable, or negligent fashion or in error;
- whether the respondent participated in a responsible, informed and well-prepared manner;

- whether the respondent cooperated with Staff and disclosed all relevant information;
- whether the respondent denied or refused to admit anything that should have been admitted; or
- any other factors the Panel considers relevant.

[18] Staff has limited its costs request against Nikolov to reflect only the partial success of Staff in proving its allegations against her.

[19] Staff has requested that no costs be imposed on Banik to reflect that he entered into an Agreed Statement of Fact with Staff admitting full culpability for breaches of sections 25 and 53 of the *Act*.

[20] Staff has provided to the panel the number of hours spent by staff members in both the investigation stage and in the litigation stage of this matter. It has also provided the hourly rates charged to the file for each necessary timekeeper. We have reviewed the summaries provided and find that both the hours spent and the rate per hour are fair and reasonable.

[21] In its Bill of Costs, Staff claims costs of \$288,496.25, a 45 percent discount from the total of hours spent and rates charged to the file. The \$288,496.25 is for the work performed for Michelle Hammer, investigator, and Christie Johnson, counsel, although we note that other staff members were involved whose time is not being claimed. We find Staff's claim for costs to be reasonable.

[22] The apportionment of costs amongst the respondents must reflect the degree of culpability of each, the cooperation, or lack thereof, of each, and the effort required to reach a result with respect to each respondent. We therefore make the following orders:

**A. Todorov and Setenterprice**

- (a) pursuant to section 127.1 of the *Act*, that Todorov and Setenterprice pay \$228,496.25, on a joint and several basis, for the costs of the hearing.

**B. Guerenska**

- (a) pursuant to section 127.1 of the *Act*, that Guerenska pay \$45,000 for the costs of the hearing.

**C. Nikolov**

- (a) pursuant to section 127.1 of the *Act*, that Nikolov pay \$15,000 for the costs of the hearing.

**VI. CONCLUSION**

[23] Based on the foregoing, we find that it is in the public interest to impose the following sanctions, and will issue an order to that effect:

- (a) Against Todorov and Setenterprice:
- i. pursuant to paragraph 2 of subsection 127(1), that trading in any securities by Todorov and Setenterprice cease permanently;

- ii. pursuant to paragraph 2.1 of subsection 127(1), that the acquisition of any securities by Todorov and Setenterprice is prohibited permanently;
- iii. pursuant to paragraph 3 of subsection 127(1), that any exemptions contained in Ontario securities law do not apply to Todorov and Setenterprice permanently;
- iv. pursuant to paragraph 6 of subsection 127(1), that Todorov be reprimanded;
- v. pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1), that Todorov resign any positions he holds as a director or officer of any issuer, registrant, or investment fund manager;
- vi. pursuant to paragraphs 8, 8.2, and 8.4 of subsection 127(1), that Todorov be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- vii. pursuant to paragraph 8.5 of subsection 127(1), that Todorov be prohibited permanently from becoming or acting as a registrant, as an investment fund manager, or as a promoter;
- viii. pursuant to paragraph 10 of subsection 127(1), that Todorov and Setenterprice and Nikolov disgorge to the Commission \$747,323, on a joint and several basis, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;
- ix. pursuant to paragraph 9 of subsection 127(1), that Todorov and Setenterprice pay an administrative penalty of \$300,000, on a joint and several basis, as a result of their non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and
- x. pursuant to section 127.1 of the Act, that Todorov and Setenterprice pay \$228,496.25, on a joint and several basis, for the costs of the hearing.

(b) Against Banik and Guerenska:

- i. pursuant to paragraph 2 of subsection 127(1), that trading in any securities by Banik and Guerenska cease for 6 years;
- ii. pursuant to paragraph 2.1 of subsection 127(1), that the acquisition of any securities by Banik and Guerenska cease for 6 years;
- iii. pursuant to paragraph 3 of subsection 127(1), that any exemptions contained in Ontario securities law do not apply to Banik and Guerenska for 6 years;
- iv. pursuant to paragraph 6 of subsection 127(1), that Banik and Guerenska be reprimanded;

- v. pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1), that Banik and Guerenska resign any positions they hold as a director or officer of any issuer, registrant, or investment fund manager;
- vi. pursuant to paragraphs 8, 8.2, and 8.4 of subsection 127(1), that Banik and Guerenska be prohibited for 6 years from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- vii. pursuant to paragraph 8.5 of subsection 127(1), that Banik and Guerenska be prohibited for 6 years from becoming or acting as a registrant, as an investment fund manager, or as a promoter;
- viii. pursuant to paragraph 10 of subsection 127(1), that Banik disgorge to the Commission \$104,700, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;
- ix. pursuant to paragraph 10 of subsection 127(1), that Guerenska disgorge to the Commission \$53,568, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;
- x. pursuant to paragraph 9 of subsection 127(1), that Banik and Guerenska each pay an administrative penalty of \$25,000 as a result of their non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and
- xi. pursuant to section 127.1 of the Act, that Guerenska pay \$45,000 for the costs of the hearing.

(c) Against Nikolov:

- i. pursuant to paragraph 2 of subsection 127(1), that trading in any securities by Nikolov cease for 10 years;
- ii. pursuant to paragraph 2.1 of subsection 127(1), that the acquisition of any securities by Nikolov cease for 10 years;
- iii. pursuant to paragraph 3 of subsection 127(1), that any exemptions contained in Ontario securities law do not apply to Nikolov for 10 years;
- iv. pursuant to paragraph 6 of subsection 127(1), that Nikolov be reprimanded;
- v. pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1), that Nikolov resign any positions she holds as a director or officer of any issuer, registrant, or investment fund manager;
- vi. pursuant to paragraphs 8, 8.2, and 8.4 of subsection 127(1), that Nikolov be prohibited for 10 years from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;

- vii. pursuant to paragraph 8.5 of subsection 127(1), that Nikolov be prohibited for 10 years from becoming or acting as a registrant; as an investment fund manager, or as a promoter;
- viii. pursuant to paragraph 10 of subsection 127(1), that Todorov and Setenterprice and Nikolov disgorge to the Commission \$747,323, on a joint and several basis, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;
- ix. pursuant to paragraph 9 of subsection 127(1), that Nikolov pay an administrative penalty of \$25,000 as a result of her non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and
- x. pursuant to section 127.1 of the Act, that Nikolov pay \$15,000 for the costs of the hearing.

Dated at Toronto this 15<sup>th</sup> day of March, 2016.

*"Alan Lenczner"*

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Alan J. Lenczner

*"Judith Robertson"*

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Judith N. Robertson

*"AnneMarie Ryan"*

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AnneMarie Ryan