



Ontario
Securities
Commission

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**IN THE MATTER OF
BENEDICT CHENG, FRANK SOAVE,
JOHN DAVID ROTHSTEIN and ERIC TREMBLAY**

**REASONS AND DECISION ON SETTLEMENT
(Section 127 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: April 18, 2017

Decision: May 10, 2017

Panel: Janet Leiper Commissioner and Chair of the Panel
AnneMarie Ryan Commissioner

Appearances: Cullen Price For Staff of the Commission
Mark Polley For John David Rothstein
Sarah Walker

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REASONS AND DECISION

I. INTRODUCTION

- [1] By Statement of Allegations dated April 12, 2017, Staff of the Ontario Securities Commission commenced proceedings against the Respondents, alleging tipping and insider trading. On April 18, 2017, the Commission held a hearing to consider whether it was in the public interest to approve a Settlement Agreement signed between Staff of the Commission and John David Rothstein (the "**Settling Respondent**").
- [2] At the conclusion of the hearing, the Commission approved the Settlement Agreement and provided brief oral reasons, with written reasons to follow. These are our written reasons approving the settlement.

II. THE ALLEGATIONS AGAINST THE SETTLING RESPONDENT

- [3] The Settlement Agreement includes a summary of facts with which the Settling Respondent agrees, but which facts remain unproven against the remaining respondents. The allegations against the non-settling respondents remain the subject of ongoing proceedings, requiring proof at a merits hearing.
- [4] The Settling Respondent was a Senior Vice President and National Sales Manager at an investment fund manager, Aston Hill Asset Management Inc. ("**AHAM**") in Toronto. In that capacity, he reported to Benedict Cheng, the President of Aston Hill Financial Inc. ("**AHF**"), and Co-Chief Investment Officer of AHF and AHAM.
- [5] A representative of AHAM learned of a proposed material transaction concerning Amaya Gaming Group Inc. ("**Amaya**") and an investment opportunity for AHAM if it were to participate in financing the transaction. Mr. Cheng had signed a non-disclosure agreement concerning the information and was aware of material terms relating to the acquisition in advance of any public announcement.
- [6] On June 11, 2014, Mr. Cheng sent an email to the Settling Respondent inviting him to one of the AHAM boardrooms. Mr. Cheng provided the confidential information about the acquisition to the Settling Respondent and told him that he should inform others who had lost money on other investments promoted by AHF and AHAM. The Settling Respondent took this to mean that this would allow those others to make up for their losses. He agreed to follow Mr. Cheng's instructions.
- [7] Approximately 2.5 hours after speaking with Mr. Cheng, the Settling Respondent entered an order to purchase 700 shares in an account in trust for his children for a total investment of \$8,322. Following the announcement of the acquisition, the price for the shares had increased by approximately 60% relative to his purchase. The Settling Respondent sold his shares on June 13, 2014 for a total profit of \$5,507, or a return of 66%. He had not traded in these shares before.
- [8] Shortly after the discussion with Mr. Cheng, the Settling Respondent contacted Frank Soave, a First Vice President and Investment Advisor at CIBC Wood Gundy via text. He provided further confidential information to Mr. Soave the following day. Mr. Soave purchased shares based on this information in the amount of \$60,755.

- [9] Trading was halted in the acquisition less than two hours after Mr. Soave's purchase. The acquisition by Amaya was announced later that day at or about 9:00 p.m. EDT. The next morning, the price per share had increased by approximately 57% relative to Mr. Soave's purchase price the day before.
- [10] On June 13, 2014, Mr. Soave sold his shares in the company for a profit of \$38,166. Following the sale, he texted the Settling Respondent, "Thank you."

III. BREACHES OF THE ACT

- [11] By engaging in the conduct described above, the Settling Respondent admitted that he breached Ontario securities law by contravening subsections 76(1) and 76(2) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"). These are serious breaches as the improper use of insider information leads to unfair advantage to those who do so and to lack of confidence and cynicism in the fairness of public markets.

IV. THE SETTLEMENT PROPOSED

- [12] The parties submitted that a range of sanctions are appropriate in all of the circumstances, which include an undertaking received from the Settling Respondent to cooperate in the future with Staff of the Commission. Such cooperation may include, where necessary, cooperating with Staff of the Commission in any further investigation of these matters and if required, testifying as a witness relating to the matters described in the Settlement Agreement.
- [13] On March 13, 2014, the Commission published Staff Notice 15-702 *Revised Credit for Cooperation Program*, which recognizes the role that cooperation by a respondent may play in reducing the sanctions recommended by Staff in connection with enforcement proceedings. The underlying policy is to encourage participants in the market to self-police, self-report and self-correct potential breaches of Ontario securities laws or misconduct that is otherwise contrary to the public interest.
- [14] In this case, Staff and the Settling Respondent have agreed that the sanctions proposed are appropriate and have taken into account cooperation as a significant mitigating factor.
- [15] Other mitigating factors described in the Settlement Agreement include:
- a. **Timing of the Cooperation:** The Settling Respondent agreed to cooperate immediately after his interview with Staff on June 15, 2016.
 - b. **Dependants/Career Consequences:** The Settling Respondent is the sole financial support of three school-aged children. As a result of the investigation, he lost his job and is struggling to find other work.
 - c. **No Prior Record:** The Settling Respondent has no prior record of breaching Ontario securities law.
 - d. **Tip Came from a Superior:** Although not excusing the conduct, the Settling Respondent felt some pressure to please his superior and to carry out the instruction to pass the information to a firm client.
 - e. **Small Profit:** The Settling Respondent made approximately \$5,500 in the shares that he purchased and sold in June of 2014.

- f. Not Registered: The Settling Respondent worked in sales and was not a registrant.

V. ANALYSIS

- [16] Insider trading and tipping is generally accompanied by market participation bans, disgorgement of profits, administrative penalties and orders to resign positions as director or officer. This array of sanctions is reflected in the Settlement Agreement in this case, however with significant credit for cooperation, particularly in the length of time for market participation bans.
- [17] We have concluded that although there has been credit allowed for cooperation, it is consistent with the Staff Notice 15-702 and that the sanctions proposed are within the range for this type of conduct, particularly given the amounts involved and the consequences that the proceedings alone have imposed on the Settling Respondent. We find that the sanctions are appropriate and reasonable. Accordingly, on April 18, 2017, the Commission issued an Order approving the Settlement Agreement, along with the following provisions:
 - a. trading in any securities or derivatives by the Settling Respondent shall cease for a period of two years, pursuant to paragraph 2 of subsection 127(1) of the Act;
 - b. the acquisition of any securities by the Settling Respondent shall cease for a period of two years, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
 - c. the Settling Respondent was reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
 - d. the Settling Respondent shall resign any positions that he holds as a director or officer of an issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;
 - e. the Settling Respondent shall be prohibited from becoming or acting as a director or officer of any issuer for a period of two years, pursuant to paragraph 8 of subsection 127(1) of the Act;
 - f. the Settling Respondent shall resign any positions that he holds as a director or officer of a registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act;
 - g. the Settling Respondent shall be prohibited from becoming or acting as a director or officer of a registrant for a period of two years, pursuant to paragraph 8.2 of subsection 127(1) of the Act;
 - h. the Settling Respondent shall resign any positions that he holds as a director or officer of an investment fund manager, pursuant to paragraph 8.3 of subsection 127(1) of the Act;
 - i. the Settling Respondent shall be prohibited from becoming or acting as a director or officer of an investment fund manager for a period of two years, pursuant to paragraph 8.4 of subsection 127(1) of the Act;
 - j. the Settling Respondent shall be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period

