



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 GARTH H. DRABINSKY,
MYRON I. GOTTLIEB AND GORDON ECKSTEIN**

**SETTLEMENT AGREEMENT OF
MYRON I. GOTTLIEB**

PART I – INTRODUCTION

1. By Notices of Hearing dated July 3, 2001 and February 20, 2013, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), it was in the public interest to make certain orders against Myron I. Gottlieb (“Gottlieb”) and other respondents, as set forth below.
2. These Notices of Hearing were issued in connection with the Statement of Allegations filed by Staff of the Commission (“Staff”) against Gottlieb, Garth H. Drabinsky (“Drabinsky”), Gordon Eckstein (“Eckstein”), Robert Topol (“Topol”) and Livent Inc. (“Livent”) on July 3, 2001 (the “Original Statement of Allegations”) and continued pursuant to an Amended Statement of Allegations against Drabinsky, Gottlieb and Eckstein (together, the “Respondents”) on February 20, 2013.
3. The Commission will issue a new Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement (“the Settlement Agreement”) between Staff and Gottlieb and to make certain orders in respect of Gottlieb.

PART II – JOINT SETTLEMENT RECOMMENDATION

4. Staff agree to recommend settlement to the Commission of the proceeding commenced by the Original Statement of Allegations and continued pursuant to the Amended Statement of Allegations against Gottlieb according to the terms and conditions set out below. Gottlieb agrees to the making of an order by the Commission in the form attached as Schedule “A” to this Settlement Agreement, based on the facts set out below.

PART III – AGREED FACTS

5. Prior to May 1993, Gottlieb and Drabinsky operated and controlled several privately-held entities involved in the live entertainment business, including Live Entertainment of Canada Inc. (“LECI”), MyGar Partnership, and MyGar Realty Inc. During that time, Gottlieb held various positions with these entities, including positions as General Partner of MyGar Partnership, as Director of MyGar Realty Inc., and as Director, President and Chief Operating Officer of LECI.
6. On or about May 7, 1993, Livent conducted an initial public offering of shares (the “IPO”) under the name of LECI, its immediate corporate predecessor. As part of the IPO, Livent acquired all of the assets of MyGar Partnership and all of the outstanding shares of MyGar Realty Inc. Livent’s shares were subsequently listed for trading on the Toronto Stock Exchange and the company became a reporting issuer in Ontario.
7. After the IPO, Gottlieb held the position of President of Livent from May 17, 1993 until June 12, 1998, at which time he became Executive Vice-President, Canadian Administration, until November 18, 1998. Throughout his tenure at Livent, Gottlieb was a director of the company.
8. On August 10, 1998, Livent issued a news release and filed a material change report pursuant to the Act, publicly announcing that an internal investigation had revealed serious irregularities in the company’s financial records. The announcement stated

that it was virtually certain that Livent's financial results for 1996 and 1997 and the first quarter of 1998 would need to be restated.

9. On November 18, 1998, Livent announced that it had filed a voluntary petition for bankruptcy in New York. The stated purpose of the petition was to pursue a comprehensive financial restructuring which had become necessary as a result of serious accounting irregularities uncovered at the company. Livent subsequently filed for protection under the *Companies' Creditors Arrangement Act* in Canada, and courts in Toronto and New York approved the sale of substantially all of Livent's assets, property, and undertakings to a third party.
10. On September 29, 1999, the Ontario Superior Court of Justice approved Livent's request to appoint Ernst & Young Inc. as receiver and manager of all of the remaining property, assets and undertakings of Livent.
11. On February 6, 2001, shares of Livent were cease traded by the Commission in response to the company's failure to file the financial statements required by the Act.
12. On July 3, 2001, Staff issued a Notice of Hearing and the Original Statement of Allegations against Gottlieb and the other Respondents in relation to their conduct as directors and officers of Livent.
13. On February 1, 2002, Gottlieb gave an undertaking to the Director of Enforcement of the Commission that pending the conclusion of the Commission proceeding, he would not apply to become a registrant, an employee of a registrant, or an officer or director of a reporting issuer without the express written consent of the Director or an order of the Commission.
14. On October 22, 2002, the Royal Canadian Mounted Police charged Gottlieb and the other Respondents with multiple counts of criminal fraud, and the Commission proceeding against the Respondents was adjourned *sine die* on November 15, 2002 pending resolution of the criminal charges.

15. On May 5, 2008, a criminal trial commenced in the Superior Court of Justice against Gottlieb and Drabinsky before Madam Justice Benotto sitting alone. The trial was held over 65 days and, on March 25, 2009, Gottlieb and Drabinsky were found guilty of two counts of fraud and one count of forgery.
16. The first fraud conviction related to Gottlieb's participation in a kickback scheme at one of Livent's privately-held predecessor entities. This kickback scheme concealed the true state of the company's assets, resulting in a misrepresentation in the financial statements of Livent's IPO prospectus. The second fraud conviction and forgery conviction related to Gottlieb's participation in misrepresentations that Livent made in its financial statements after it became a public company. These misrepresentations reduced reported expenses and increased reported net income, so that the company would appear to be meeting its financial projections.
17. Pursuant to his convictions, Gottlieb received a sentence of 4 years of incarceration for misrepresentations related to Livent's IPO prospectus and 6 years of incarceration for misrepresentations related to Livent's post-IPO period, to be served concurrently.
18. Gottlieb appealed his convictions and his sentences. On September 13, 2011, the Ontario Court of Appeal upheld the convictions, but reduced Gottlieb's sentences to a total of 3 years and 4 years, to be served concurrently.
19. The Supreme Court of Canada dismissed an application brought by Drabinsky to appeal the ruling of the Ontario Court of Appeal on March 29, 2012.
20. On March 8, 2013, pursuant to conditions of his parole, Gottlieb was prohibited from, among other things, owning or operating a business or being in a position of responsibility for the management of finances or investments for any other individual, charity, business or institution until September 10, 2015.

**PART IV – CONTRAVENTIONS OF ONTARIO SECURITIES LAW AND
CONDUCT CONTRARY TO THE PUBLIC INTEREST**

21. Pursuant to section 127(10) of the Act, and to facilitate protection of the capital markets in a timely, open and efficient manner, the Commission is entitled to consider convictions related to securities when deciding whether to make orders in the public interest.
22. Gottlieb's convictions, as set out in Part III above, constitute a basis pursuant to s. 127(10) of the Act for an order in the public interest under s. 127(1) of the Act.

PART V – TERMS OF SETTLEMENT

23. This proceeding will be settled on the terms set out below.
24. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Gottlieb agrees with the facts set out in Part III of this Settlement Agreement.
25. Staff will tender documents to the Commission evidencing the convictions entered against Gottlieb, as summarized in Part III above.
26. The Commission will make an order pursuant to section 127(1) of the Act stating that:
 - (a) the Settlement Agreement is approved;
 - (b) pursuant to clause 2 of subsection 127(1) of the Act, Gottlieb is prohibited from trading in securities for a period of 15 years, effective the date of the approval of the Settlement Agreement, subject to a carve-out to allow him to trade securities for the account of any Registered Retirement Savings Plan ("RRSP") and/or any Registered Retirement Income Fund ("RRIF") (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership, provided that:

- i. the securities traded are listed and posted for trading on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges), or are issued by a mutual fund that is a reporting issuer or are debt securities;
 - ii. he does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and
 - iii. he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only;
- (c) pursuant to clause 2.1 of subsection 127(1) of the Act, Gottlieb is prohibited from the acquisition of securities for a period of 15 years, effective the date of the Order of the Commission, subject to a carve-out to allow him to acquire securities for the account of any Registered Retirement Savings Plan (“RRSP”) and/or any Registered Retirement Income Fund (“RRIF”) (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership, provided that:
- i. the securities acquired are listed and posted for trading on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges), or are issued by a mutual fund that is a reporting issuer or are debt securities;
 - ii. he does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and
 - iii. he carries out any permitted acquisition through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only;

- (d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law will not apply to Gottlieb;
- (e) pursuant to clause 8 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a director or officer of an issuer;
- (f) pursuant to clause 8.2 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a director or officer of a registrant;
- (g) pursuant to clause 8.4 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a director or officer of an investment fund manager; and
- (h) pursuant to clause 8.5 of subsection 127(1) of the Act, Gottlieb is permanently prohibited from becoming or acting as a registrant, an investment fund manager, or as a promoter of any issuer.

PART VII – STAFF COMMITMENT

- 27. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law against Gottlieb in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 28 below.
- 28. If the Commission approves this Settlement Agreement and Gottlieb fails to comply with any of the terms of the Settlement Agreement, Staff may bring a proceeding under Ontario securities law against Gottlieb. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

- 29. The parties will seek approval of the Settlement Agreement at a hearing before the Commission to be conducted according to the procedures set out in the Settlement Agreement and the Commission's Rules of Procedure.

30. If the Commission approves the Settlement Agreement, Gottlieb agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
31. If the Commission approves the Settlement Agreement, neither party will make any public statement that is inconsistent with the Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
32. Whether or not the Commission approves the Settlement Agreement, Gottlieb will not use, in any proceeding, the Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

33. If the Commission does not approve the Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:
 - i. the Settlement Agreement and all discussions and negotiations between Staff and Gottlieb before the settlement hearing takes place will be without prejudice to Staff and Gottlieb; and
 - ii. Staff and Gottlieb will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by the Settlement Agreement, or by any discussions or negotiations relating to this agreement.
34. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

- 35. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.
- 36. A faxed or emailed copy of any signature will be treated as an original signature.

Dated this “22nd” day of August, 2014

“Myron I. Gottlieb”

Myron I. Gottlieb

“Sharon Lavine”

Witness

Dated this “22nd” day of August, 2014

“Tom Atkinson”

Tom Atkinson
Director, Enforcement Branch