



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 JBI, INC., and JOHN W. BORDYNUIK

STATEMENT OF ALLEGATIONS

Staff of the Ontario Securities Commission the (“Commission”) make the following allegations:

OVERVIEW

1. During the years 2008 to 2011 (the “Distribution Period”) the Respondents John W. Bordynuik (“Bordynuik”) and JBI, Inc. (“JBI”) raised money for JBI and/or its predecessor entities.
2. In doing so Bordynuik caused JBI to raise a total of approximately \$11.2 million U.S. from 433 Ontario investors through activities which breached Section 53 of the *Securities Act*, R.S.O. 1990 c.S.5 (the “Act”), were contrary to the public interest and which were not in compliance with Ontario securities law.
3. During part of the Distribution Period, Bordynuik caused to be prepared and signed financial statements of JBI in which JBI’s financial position was misstated by approximately \$10 million as a result of attributing an excessive value to one of the company’s assets. This misrepresentation was first made in JBI’s third quarter financial statements for the quarter ended September 30, 2009 and contained in its Form 10-Q. It was repeated in JBI’s 2009 year-end financial statements contained in its Form 10K for the year ended December 31, 2009. Both documents were filed with the Securities Exchange Commission (“SEC”).
4. In its third quarter financial statements filed on November 16, 2009 and in its year-end financial statements filed on March 31, 2010 for the year-ended December 31, 2009, JBI reported that it owned media credits having a valuation of \$9,997,134.
5. This valuation was erroneous, and was not in compliance with Generally Accepted Accounting Principles or “GAAP”.

6. Bordynuik certified that, based on his knowledge, the above financial statements fairly presented the financial condition of JBI when in fact they did not.
7. Monies were raised from the public, including from Ontario investors, during the time that JBI's financial statements contained the erroneously high valuation for the media credits. According to GAAP the media credits should have been written off in their entirety as of September 30, 2009.
8. While Bordynuik was raising funds on behalf of JBI, he established a trust for the benefit of his two minor children (the "Childrens' Trust"), which was governed by a formal trust agreement.
9. Bordynuik caused shares of JBI or John Bordynuik Inc. to be irrevocably settled on his mother as trustee of the Childrens' Trust. The Childrens' Trust held those shares in a securities account at RBC Dominion Securities.
10. Having irrevocably settled JBI shares in trust Bordynuik then directed his mother as trustee to transfer the shares out of the trust account at RBC Dominion Securities to a number of transferees whom he designated, contrary to the terms of the Childrens' Trust.
11. Bordynuik used the Childrens' Trust in part as a reservoir of JBI shares which could be distributed to others, including Bespoke Growth Partners, in aid of acquiring a listing on the AMEX or NASDAQ exchanges. Bordynuik's misuse of the Childrens' Trust for this purpose was conduct contrary to the public interest.

The Respondents

12. Bordynuik is an individual residing in the Province of Ontario. Bordynuik has never been registered by the Commission in any capacity.
13. JBI was formerly known as 310 Holdings Inc., and was incorporated in the State of Nevada on April 20, 2006.
14. Bordynuik bought 63% of the issued and outstanding shares of 310 Holdings Inc. on April 24, 2009.
15. Bordynuik was thereafter appointed President, CEO and CFO of 310 Holdings Inc.
16. On July 15, 2009, 310 Holdings Inc. purchased the assets of John Bordynuik, Inc.

17. Effective October 5, 2009, 310 Holdings Inc. changed its name to JBI. Bordynuik was the CEO and CFO of the newly named company.

18. JBI is quoted on the OTC Bulletin Board. JBI and its predecessor entities have been SEC reporting companies since 2006.

19. JBI's fiscal year ends on December 31.

ALLEGATIONS: THE ILLEGAL DISTRIBUTIONS CONTRARY TO SECTION 53 OF THE ACT

The Distribution During 2008

20. During 2008 Bordynuik distributed securities of JBI or John Bordynuik Inc. to residents of Ontario without a prospectus as required by Section 53(1) of the *Act*.

21. In documents filed with the Commission Bordynuik purported to rely on exemptions for the 2008 distribution, namely the accredited investor exemption and the family, friends and business associates exemption.

22. The distribution in 2008 raised roughly \$2.9 million from approximately 204 Ontario investors. The 2008 distribution was contrary to Ontario securities law for the following reasons:

(a) The family, friends and business associates exemption does not apply to a trade in securities in Ontario hence was not an available exemption;

(b) It appears that the majority of the Ontario investors were not in fact accredited investors. Bordynuik's reliance upon that exemption was inappropriate.

23. The 2008 distribution of John Bordynuik Inc. shares was accordingly an illegal distribution insofar as it was marketed and sold to Ontario investors, contrary to Section 53 of the *Act*.

The PIPE Transactions

24. A private investment in public equity is known as a "PIPE offering". The acronym "PIPE" stands for Private Investment in Public Equity. In the United States a PIPE offering offering may be registered with the SEC or may be completed as an unregistered private placement.

25. Bordynuik caused JBI to raise money through four PIPE offerings and in each of the four PIPE offerings shares were marketed and sold to Ontario residents. The particulars are set out below.

26. The first PIPE offering was at \$0.80 per share and took place from December 2009 through January 14, 2010. In the first PIPE offering Bordynuik assisted in the marketing and sale of shares to 176 Ontario residents and raised \$4,105,000 US in proceeds from those Ontario investors. The first PIPE offering was made without a prospectus or offering memorandum and there was no exemption available. Bordynuik did not purport to claim any exemption on behalf of JBI. The distribution to Ontario investors during the first PIPE offering was contrary to Section 53 of the *Act*.

27. The second PIPE offering took place in May 2010. Bordynuik caused JBI to distribute its shares at \$4.00 per share during the second PIPE offering and he caused JBI to market and sell shares to 40 Ontario investors who paid in aggregate \$1,734,000 U.S. The second PIPE offering was made without a prospectus or offering memorandum and there was no exemption available. Bordynuik did not purport to claim any exemption on behalf of JBI. The distribution to Ontario investors during the second PIPE offering was contrary to Section 53 of the *Act*.

28. In December 2010 Bordynuik caused JBI to carry out the third PIPE offering, this time offering shares of JBI at \$0.50 per share. A total of 6 Ontario investors participated in the third PIPE offering. A total of \$1,215,000 US was raised from these 6 Ontario investors. There was no prospectus or offering memorandum during the third PIPE offering. There was no exemption available and Bordynuik did not purport to claim any exemption on behalf of JBI. The distribution to Ontario investors during the third PIPE offering was contrary to Section 53 of the *Act*.

29. Bordynuik caused JBI to undertake a fourth PIPE offering in April 2011. At this time JBI offered shares of JBI for sale at \$0.70 per share. In the fourth PIPE offering the company marketed and sold its shares to 52 Ontario residents and raised a total of \$1,215,000 US from Ontario investors. No prospectus or offering memorandum was provided in connection with the fourth PIPE offering. No exemption was available with respect to sales to Ontarians within that PIPE offering. Bordynuik did not purport to claim any exemption on behalf of JBI. The distribution to Ontario investors during the fourth PIPE offering was contrary to Section 53 of the *Act*.

ALLEGATIONS: MISLEADING FINANCIAL STATEMENTS CONTRARY TO SECTION 126.2 OF THE ACT

30. On or about August 29, 2009 JBI's predecessor entity 310 Holdings Inc. purchased 100% of the issued and outstanding shares of Javaco Inc., a wholly owned subsidiary of Domark International ("Domark").

31. In a separate agreement Domark's CEO assigned media credits purportedly representing \$9,997,134 worth of prepaid print and radio ads to 310 Holdings Inc. to be used for marketing and advertising.

32. In exchange for the assignment of the media credits, 310 Holdings Inc. on August 24, 2009 issued a million shares of its own common stock to Domark, valued at \$1.00 per share or \$1 million dollars in total.

33. On October 5, 2009 310 Holdings Inc. changed its name to JBI and Bordynuik assumed the role of CEO and CFO of JBI. On January 1, 2010 Ronald Baldwin Jr. was appointed CFO of JBI.

34. The company's third quarter ended on September 30, 2009. Financial statements for the company for the period ended September 30, 2009 were included with the Form 10Q which the company filed with the SEC on November 16, 2009.

35. In the above financial statements JBI reported the media credits purchased from Domark as an asset of the company at their purported face value of \$9,937,134. This valuation was contrary to GAAP. Bordynuik certified that, based on his knowledge, the financial statements fairly represented in all material respects the financial condition of JBI. The financial statements were not in fact GAAP-compliant as a result of the valuation applied to the media credits.

36. JBI's year end was December 31, 2009 and the company filed its 2009 year-end financial statements with its Form 10K on March 31, 2010. JBI's 2009 year-end financial statements also valued the media credits incorrectly at \$9,997,134.

37. As CEO, Bordynuik certified that the year-end financial statements fairly presented in all material respects the financial condition of JBI. In fact the year-end financial statements were not GAAP-compliant in respect of the media credits valuation.

38. On May 21, 2010 JBI filed a Form 8K stating that the previously issued financial statements referenced above should not be relied upon due in part to questions about the valuation of the media credits.

39. On July 9, 2010 and on November 17, 2010 JBI issued two financial statement restatements. In those restatements JBI wrote down the media credits to zero and disclosed that the credits had previously been valued improperly.

40. Between November 16, 2009 and the eventual correction of the misrepresentation in July 2010, JBI raised money from the public through two PIPE offerings. The May 2010 PIPE offering was at \$4.00 per share, a valuation which was premised in part on the erroneous value that had been attributed to the media credits.

41. By virtue of the misrepresentation Ontario investors who purchased during the first and second PIPE offerings may have been misled about the value of JBI. Bordynuik knew or ought reasonably to have known that the media credit valuation was unreliable and not in conformity with GAAP. The respondent's actions were contrary to 126.2 of the *Act*.

ALLEGATIONS: MISUSE OF THE CHILDRENS' TRUST ACCOUNT CONTRARY TO SECTION 127

42. On or about July 6, 2007 Bordynuik and others executed a document entitled "1683091 Trust Agreement".

43. The Childrens' Trust (previously defined in paragraph 8), set up pursuant to the 1683091 Trust Agreement, appears to have been a trust established by Bordynuik for the purpose of functioning as a repository for shares which he wished to settle in trust for the benefit of his two children.

44. The July 6, 2007 agreement created a trust for Bordynuik's two children and provided that his mother Shirley Bordynuik was to manage the trust assets as trustee. Bordynuik settled shares of John Bordynuik Inc. upon 1683091 Trust in trust for his children. The trust entity, 1683091 Trust, maintained an account with RBC Dominion Securities ("DS"). Shirley Bordynuik was the person authorized to give instructions on that account.

45. Pursuant to the Childrens' Trust agreement, shares were to be held in trust for the benefit of the two Bordynuik children.

46. The trust agreement and other trust documentation was filed with DS as part of the “Know Your Client” documents with respect to 1683091 Trust’s account at DS. The DS trust account initially held 6,000 shares of John Bordynuik Inc.. In or about October 2009 an additional share certificate representing 1 million shares was deposited to the trust account at DS.

47. Immediately thereafter, on or about October 23, 2009, Bordynuik caused the shares represented by these certificates to be transferred to fourteen different transferees, none of whom were beneficiaries of the trust.

48. Again on December 10, 2009 Bordynuik caused 300,000 shares to be transferred improperly from the Childrens’ Trust account to the benefit of Bespoke Growth Partners. Bespoke Growth Partners was not a beneficiary of the Childrens’ Trust.

49. Bordynuik used the Childrens’ Trust account at DS as a reservoir of JBI shares which he distributed to people who had been involved in or friendly to the company’s operations. Bordynuik undertook some of these activities in pursuit of JBI becoming up-listed on American exchanges. His use of the trust account was improper in that he distributed shares subject to the Childrens’ Trust to parties who were not beneficiaries of the Childrens’ Trust.

50. The above conduct violated the terms of the Childrens’ Trust, and was contrary to the public interest thereby justifying an Order under Section 127 of the *Act*.

STAFF’S ALLEGATIONS

51. Staff alleges that the conduct of Bordynuik as described above is contrary to the following provisions of the *Act*:

- (a) the distribution of JBI’s securities during the year 2008 purported to rely on prospectus exemptions which were not in fact applicable, and was accordingly an illegal distribution contrary to Section 53 of the *Act*;
- (b) the distributions of JBI’s securities which took place between December 2009 and April 2011 were made without a prospectus and without any available exemption, contrary to Section 53 of the *Act*;
- (c) JBI’s third quarter financial statements for the quarter ending September 30, 2009 and JBI’s year-end financial statements for the fiscal year 2009 contained a materially incorrect

valuation of an asset and hence were misleading financial statements, contrary to Section 126.2 of the *Act*; and

- (d) Bordynuik established a trust for his children into which he deposited JBI shares and then transferred them out of the Childrens' Trust into the hands of persons who were not beneficiaries of that Trust, conduct which is contrary to the public interest, thereby meriting an Order under Section 127 of the *Act*.

April 1, 2014