ALBERTA SECURITIES COMMISSION

DECISION

Citation: Daystar Holdings Inc., Re, 2008 ABASC 120 **Date: 20080305**

Daystar Holdings Inc. and Timothy Michael Lawler

Panel:	Kenneth B. Potter Allan L. Edgeworth, P.Eng.
Counsel:	Diane Volk for Commission Staff
	James Heelan, QC for the Respondents
Dates of Written Materials:	29 January and 3 March 2008
Date of Decision:	5 March 2008

I. INTRODUCTION

[1] In an Amended Notice of Hearing dated 18 December 2007, staff ("Staff") of the Alberta Securities Commission ("Commission") alleged that Richard George Kearl, Coadum Capital Fund 1, LLC ("Coadum"), Coadum Capital Fund II, LP, Coadum Advisors, Inc., Daystar Holdings Inc. ("Daystar"), Timothy Michael Lawler ("Lawler"), James Albert Jeffery and Thomas Edward Repke had engaged in illegal trades and distributions of securities. Staff also alleged that some of those named had made misleading statements or misrepresentations to Alberta investors and that all had acted contrary to the public interest.

[2] On 29 January 2008 two of those named, Daystar and Lawler (together, the "Respondents"), executed a "Statement of Admissions" in which they admit certain facts, breaches of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act") and conduct contrary to the public interest. They proposed, jointly with Staff, certain consequences of that conduct. The Statement of Admissions includes the Respondents' acknowledgement that each had sought independent legal advice and that their admissions in that document were made voluntarily.

[3] Counsel for Staff and counsel for the Respondents agreed to the panel determining this matter on the basis of a written hearing and declined the opportunity to make oral submissions to the panel. We accepted the Statement of Admissions as evidence. Its content was not disputed and no contrary evidence was tendered.

[4] Based on the evidence, we are ordering sanctions against each Respondent consistent with the joint submission of the parties. We are also ordering that Daystar and Lawler make payments towards the costs of the investigation. Our decision and reasons follow.

II. FACTS AND FINDINGS

[5] The factual background to this matter is drawn from the Statement of Admissions.

A. Respondents Traded and Distributed Securities

[6] As set out in the Statement of Admissions (omitting paragraph numbering):

> Daystar was incorporated in Alberta on April 5, 2005 as Daystar Power Systems Inc. (DPSI). DPSI changed its name to Daystar on January 10, 2006. At all material times, Daystar was not a reporting issuer in Alberta. Daystar was the "Canadian Regional Director" for Coadum. Neither DPSI nor Daystar has ever been registered with the Executive Director of the Commission (Executive Director).
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> Lawler is a resident of Edmonton, Alberta. At all material times, he was the sole director and shareholder of Daystar and its predecessor, DPSI. Lawler has never been registered with the Executive Director.

> Coadum was incorporated in Delaware, U.S.A. on October 19, 2005. At all material times, it was not a reporting issuer in Alberta. No preliminary prospectus or prospectus has ever been filed with the Commission for the distribution of securities of Coadum, nor has the Executive Director ever issued a receipt for a prospectus for the distribution of any securities of Coadum. Coadum has never been registered with the Executive Director.
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> . . .
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> Between January and May 2006, Daystar and Lawler solicited residents of Alberta to invest in Coadum securities, promising a secure principal and earnings of 2.5% to 8% per month. Advertisements were placed in the *Calgary Herald* and the *Edmonton Journal* newspapers, and seminars were held in Edmonton and Calgary, to solicit investors.
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> During that time period, through the efforts of Daystar and Lawler, approximately $2.5 million USD was invested by at least ten Alberta investors in Coadum securities.

[7] The Respondents implicitly admit, and we find, that the investments sold were "securities" as defined in the Act, that the sale of those securities to the Alberta investors constituted both "trades" and "distributions" under the Act, and that no exemptions from the registration and prospectus requirements of the Act were available in respect of such trades and distributions.

B. Other Facts

[8] In response to questions, the panel was advised that:

(a) Lawler has received a refund on principal and return on investment of approximately US$60,000, but his request for the refund of the balance of his invested funds (US$8,000 - 10,000) has not been honoured;

(b) two other Alberta investors have apparently requested and received at least a partial refund of their principal;

(c) most Alberta investors have indicated to Staff that they have not received any refund of their principal investment in Coadum securities; and

(d) neither Staff nor Lawler have any knowledge as to whether any funds invested by Alberta investors in Coadum securities have been lost.

C. Respondents Contravened Alberta Securities Laws

[9] The Respondents admit, and we find, that they: (i) contravened section 75(1)(a) of the Act by trading in Alberta in the Coadum securities without being registered with the Executive Director and without an appropriate exemption from the registration requirement; and (ii) contravened section 110 of the Act by distributing the Coadum securities without filing a preliminary prospectus or prospectus and receiving a receipt from the Executive Director, and without an appropriate exemption from the prospectus requirements.

D. Respondents Acted Contrary to the Public Interest

[10] The registration and prospectus requirements are core elements of Alberta securities laws. They are intended to provide Alberta investors with two essential protections: (i) information (contained in a prospectus) to assist them in making informed investment decisions; and (ii) the involvement of a registered intermediary who has appropriate knowledge of securities, the capital market, and the investment objectives and risk tolerances of the investor client.

[11] In contravening these requirements, the Respondents denied Alberta investors these statutory protections. The Respondents admit, and we find, their contraventions of the Act were contrary to the public interest.

III. SANCTION

A. Joint Proposal

[12] The Respondents and Staff jointly proposed sanctions under the Act: a $20,000 administrative penalty; a six-month cease-trade order; and a six-month denial of exemptions.

[13] The Statement of Admissions indicates that the sanctioning proposal took into consideration the admissions and the following circumstances:

> [a] Lawler states that the president of Coadum told Lawler on more than one occasion that an investment in Coadum was not a security, and that Lawler and Daystar need not be registered with the Commission, although Lawler admits to not exercising sufficient care to ensure that this was correct;
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> [b] Lawler states that he earned less than $10,000 [in] commissions from sales of Coadum securities, and that he paid a portion of those commissions to a sales agent;
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> [c] Lawler risked his personal funds by investing $70,000 USD in Coadum securities;
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> [d] Daystar and Lawler have not been previously sanctioned by the Commission and have cooperated with Staff during the investigation; and
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> [e] In making the admissions [in the Statement of Admissions], Lawler and Daystar have saved the Commission the time and expense associated with a contested hearing under the Act.

[14] Staff did not dispute those statements.

B. Conclusion on Sanctions

[15] In making orders under sections 198 and 199 of the Act, we must be of the opinion that it is in the public interest to do so. We find that the Respondents' conduct in illegally

trading in and distributing the Coadum securities to Alberta-resident investors brought into question the integrity and reputation of the Alberta capital market and is deserving of sanction.

[16] In considering the appropriateness of the proposed sanctions we have considered the purposes and principles of sanctions in an enforcement proceeding as stated in *Re Stewart*, 2007 ABASC 546 at paras. 23-24, *Re Lamoureux*, [2002] A.S.C.D. 125 at para. 11 (affirmed on other grounds 2002 ABCA 253) and other decisions of the Commission.

[17] Both the existence and the content of the Statement of Admissions indicate to us that the Respondents appreciate the seriousness of their misconduct and accept the necessity of sanctions for that misconduct. In addition, the Respondents' cooperation has assisted in the timely resolution of this matter and, in our view, is a significant mitigating factor to be taken into account in assessing the appropriateness of a proposed sanction.

[18] We believe that this recognition by the Respondents, coupled with appropriate sanctions, will assist in ensuring that the Respondents will not repeat their actions to the future detriment of Alberta investors.

[19] The role of a panel reviewing agreed statements of facts and joint submissions on appropriate sanction is not to impose the sanction we would order after a full hearing. Rather we are to ensure that the parties provided the panel with the facts necessary to decide the case and that the proposed sanctions are within a range of sanctions that we consider reasonable in the circumstances of the particular respondents. This approach recognizes that the panel is not aware of all the considerations that the parties faced when reaching their agreed position on fact and sanction. In this case, we are of the view that, had this matter gone to a contested hearing and the facts in the Statement of Admissions proved, we would have ordered longer market access bans and a larger administrative penalty. However, while we believe that the sanction proposed by the parties is on the light side, we are satisfied that the totality of the agreed sanction is within an acceptable range in all the circumstances, and one that will fulfil our protective and preventative public interest mandate.

IV. SANCTIONS ORDERED

[20] We therefore make the following orders in the public interest:

(a) under sections 198(1)(b) and (c) of the Act, Daystar and Lawler must cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to either of them, for six months from the date of this decision, except that this order does not preclude Lawler from conducting personal trading in a TD Waterhouse RRSP account

maintained with a registrant to whom Lawler has first provided a copy of this order; and

(b) under section 199 of the Act, Daystar and Lawler must pay an administrative penalty of a total of $20,000, which is imposed against Daystar and Lawler jointly and severally.

V. COSTS

[21] We were also presented with a joint proposal that Daystar and Lawler pay amounts toward the costs of the investigation.

[22] Notwithstanding that the Respondents' admissions and their joint submissions with Staff avoided the cost of a contested hearing and thereby contributed to the efficient resolution of this matter, it is obvious that costs were incurred in Staff's investigation. We agree with the parties that it is appropriate for Daystar and Lawler to pay a portion of those costs. There being no dispute as to quantum, we accept the joint submission on this point.

[23] Accordingly, we order, under section 202 of the Act, that Daystar and Lawler pay a total of $6,000 towards the costs of the investigation, which is imposed against Daystar and Lawler jointly and severally.

[24] This proceeding is now concluded.

5 March 2008

For the Commission:

"original signed by"
Kenneth B. Potter

"original signed by"
Allan L. Edgeworth, P.Eng