ALBERTA SECURITIES COMMISSION

DECISION

Citation: Limelight Entertainment Inc., Re, 2007 ABASC 914 Date: 20071212

Limelight Entertainment Inc., David Campbell, Carlos Da Silva, Tim McCarty, Jacob Moore, Ove Simonsen, Eric O'Brien, Hank Ulfan and Rick Clynes

Panel:	Glenda A. Campbell, QC Dennis A. Anderson, FCA Allan L. Edgeworth, P. Eng.
Appearing:	Laura L. Burt and Tony G. Bell for Commission Staff
Submissions Completed:	31 October 2007
Date of Decision:	12 December 2007

I. BACKGROUND

[1] This decision concludes a two-part hearing concerning allegations made by staff (Staff) of the Alberta Securities Commission (the Commission) in an amended notice of hearing dated 10 October 2006, in which Staff indicated that they were seeking orders against Limelight Entertainment Inc. (Limelight), David Campbell (Campbell), Carlos Da Silva (Da Silva), Tim McCarty (McCarty), Jacob Moore (Moore), Ove Simonsen (Simonsen), Eric O'Brien (O'Brien), Hank Ulfan (Ulfan) and Rick Clynes (Clynes) (collectively, the Respondents; we refer to the latter six as the Respondent Salespersons) under sections 198, 199 and 202 of the *Securities Act*, R.S.A. 2000, c. S-4 (the Act).

[2] On 19 September 2007, we issued our findings sustaining all but one of Staff's allegations against the Respondents – *Re Limelight Entertainment Inc.*, 2007 ABASC 710 (the Merits Decision).

[3] In the Merits Decision, we found that, between January 2004 and January 2006 (the Relevant Period), Limelight, through the selling efforts of the Respondents and others, sold Limelight securities to 249 Alberta investors for total proceeds of about $817,000. The sales of Limelight securities were purportedly made in reliance on the accredited investor exemption provided in Multilateral Instrument 45-103 *Capital Raising Exemptions* (MI 45-103) and its successor, National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106), as the case may be. However, we found that the seven Alberta-resident investor witnesses did not qualify as accredited investors when they purchased or were solicited to purchase Limelight securities. We also accepted the evidence of a Staff investigator that two additional Alberta-resident investors interviewed by him did not qualify as accredited investors when they purchased Limelight securities. Further, the evidence was that no reasonable inquiries were made of any of the investor witnesses as to their accredited investor status prior to the sales of Limelight securities to them being completed. Indeed, the evidence as a whole demonstrated to us that there were no reasonable, serious efforts made by or on behalf of Limelight to ascertain whether any Albertans being offered Limelight securities were in fact accredited investors prior to the sales to them being completed, contrary to the intent of the accredited investor exemption. Therefore, we found that the accredited investor exemption was not available to trade and distribute Limelight securities to Alberta investors during the Relevant Period. As discussed in the Merits Decision, no other exemption under Alberta securities laws was apparently relied on or available, none of the Respondents was registered under the Act to trade in securities during the Relevant Period, and Limelight had never filed, nor received a receipt for, a prospectus to distribute its securities in Alberta.

[4] We also found that, during the Relevant Period, Da Silva, as the president and a director of Limelight, was its principal guiding mind. We further found that Campbell, a director and the vice-president, secretary and treasurer of Limelight, engaged in activities directly instrumental in the sales of Limelight securities to Alberta investors. In addition,

we found that the Respondent Salespersons directly solicited and encouraged prospective Alberta investors to purchase Limelight securities and they, together with other Limelight salespersons, were directly responsible for many of the sales of Limelight securities to Alberta investors.

[5] In the Merits Decision, we concluded that:

> (a) each of the Respondents engaged in trading and distributing Limelight securities without registration, a prospectus and any applicable exemptions, contrary to sections 75(1)(a) and 110 of the Act and the public interest;
>
> (b) each of Da Silva, Moore, Simonsen, O'Brien and Ulfan represented to a prospective investor that or to the effect that the Limelight securities would be listed on an exchange with the intention of effecting a trade in the securities, contrary to section 92(3)(b) of the Act and the public interest;
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> (c) Limelight, Da Silva and Campbell failed to file reports of exempt distribution as required, contrary to section 7.1(1) of MI 45-103 and section 6.1 of NI 45-106, as the case may be, and the public interest; and
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> (d) Campbell made false statements to Staff investigators when he knew or ought reasonably to have known that the Commission was conducting an investigation, contrary to the public interest.

[6] It remained to be determined whether it is in the public interest to order sanctions, and whether it is appropriate to order costs, against any of the Respondents. We received written submissions from Staff on the issues of sanction and costs on 5 October 2007. The Respondents had until 24 October 2007 to file their written submissions, and Staff had until 31 October 2007 to file any reply submissions. Of the Respondents, only Ulfan filed written submissions. (We note that Ulfan's written submissions, in the form of a letter to the panel dated 2 October 2007 and faxed 7 October 2007, are more accurately characterized as evidence than submissions.) Staff did not file reply submissions, and none of the parties requested an opportunity to make oral submissions.

[7] Following are our decision and reasons as to the issues of sanction and costs. This decision should be read in conjunction with the Merits Decision.

II. SANCTIONS

A. Positions of Staff and Ulfan

1. Staff

[8] Staff submitted that the public interest requires that Limelight be ordered to cease trading and be denied the use of all exemptions under Alberta securities laws until a prospectus is filed with and receipted by the Commission.

[9] Staff submitted that it is in the public interest for us to remove Da Silva and Campbell from the Alberta capital market by prohibiting them from trading in securities or exchange contracts, denying them the use of all exemptions under Alberta securities laws and prohibiting them from acting as a director or officer of any issuer, for ten years and eight years, respectively. Staff further ask that we impose an administrative penalty of $75,000 on Da Silva and of $60,000 on Campbell.

[10] As for the Respondent Salespersons, Staff argued that the public interest requires that Ulfan be prohibited from trading in securities or exchange contracts and be denied the use of all exemptions under Alberta securities laws, in each case for seven years; that Moore, Simonsen and O'Brien be subject to similar sanctions, in each case for three years; and that McCarty and Clynes be subject to similar sanctions, in each case for two years. Staff also contended that it is in the public interest to order that Ulfan pay an administrative penalty of $30,000; that each of Moore, Simonsen and O'Brien pay an administrative penalty of $15,000; and that each of McCarty and Clynes pay an administrative penalty of $10,000.

[11] Staff submitted that the orders they seek would prevent a recurrence of the Respondents' serious misconduct in the exempt capital market as well as deter others who might be tempted to engage in similar misconduct.

2. Ulfan

[12] In his letter to the panel dated 2 October 2007 and faxed 7 October 2007, Ulfan disputed the evidence of investor witness DM, on which our findings of Ulfan's misconduct were largely based.

B. The Law

[13] The Commission exercises its regulatory authority to make public interest orders under sections 198 and 199 of the Act prospectively, with a view to protecting and preventing, not punishing or remedying (see *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45; and *Re Podorieszach*, 2004 ABASC 567 at para. 17).

[14] In exercising our authority under sections 198 and 199 of the Act, we consider whether a sanction will deter not only those whose misconduct is at issue in a particular case (specific deterrence) but also those who are inclined to engage in similar misconduct in the Alberta capital market (general deterrence) (see *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62).

[15] The Commission provided a non-exhaustive list of factors potentially relevant to our determination of whether, or what, sanctions are appropriate in a particular case in *Re Lamoureux*, [2002] A.S.C.D. No. 125 at para. 11, aff'd on other grounds 2002 ABCA 253:

- the seriousness of the allegations proved against the respondent,
- the respondent's past conduct, including prior sanctions,
- mitigating factors,
- the respondent's experience in the capital markets,
- the level of the respondent's activity in the capital markets
- whether the respondent recognizes the seriousness of the improper activity
- the harm suffered by investors as a result of the respondent's activities
- the benefits received by the respondent as a result of the improper activity
- the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction
- the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities
- the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity
- the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets and
- previous decisions made in similar circumstances

[16] Contraventions of or failures to comply with Alberta securities laws are typically motivated by financial or economic considerations, for which monetary administrative penalties are particularly apt deterrents. Until 8 June 2005, section 199 of the Act contemplated an administrative penalty to a maximum of $100,000 (individual) or $500,000 (other person or company) for each contravention of or failure to comply with Alberta securities laws. Effective 8 June 2005, these maximums were increased to $1 million. In our view, to the extent that the misconduct in this case continued beyond 8 June 2005, any application by us of section 199 as amended would not constitute a retrospective application, but, in any event, because administrative penalties are not punitive, the presumption against retrospective application does not bar the application in this case of section 199 as amended (see *Re Capital Alternatives Inc.*, 2007 ABASC 482 at paras. 32-34). Therefore, an administrative penalty to a maximum of $1 million per contravention of or failure to comply with Alberta securities laws is among the sanctions available to us in this case.

C. Application of the Law

1. Introduction

[17] Considering the circumstances, in light of the *Lamoureux* factors, Staff's submissions and Ulfan's letter, we conclude that it is in the public interest to order the following sanctions against the Respondents for the following reasons.

2. Limelight

[18] Through the selling efforts of the Respondents and others in the Alberta capital market during the Relevant Period, Limelight engaged in conduct contrary to the registration and prospectus requirements of the Act and the public interest. In denying Alberta investors not only advice from knowledgeable registrants attentive to their financial circumstances, investment objectives and risk tolerances but also a prospectus

disclosing material information about Limelight to assist in the making of informed investment decisions, Limelight deprived Alberta investors of protections key to the securities regulatory regime. This was serious misconduct.

[19] Further, Limelight, through Da Silva and Campbell, failed to file reports of exempt distribution as required, contrary to section 7.1(1) of MI 45-103 and section 6.1 of NI 45-106, as the case may be, and the public interest. This failure to comply with Alberta securities laws undermined the Commission's ability to administer and police the securities regulatory regime and compromised the transparency of capital market transactions. This, too, was serious misconduct.

[20] Limelight was supposedly engaged in the "production and distribution of music, books, live shows, TV and films" and raised funds to finance its projects. According to Da Silva, Limelight, since its inception, had raised about $2.3 million but had been trying to raise $10 million. During the Relevant Period, Limelight received some $817,000 in total from the sale of its securities to 249 Alberta investors. Apart from a small revenue stream, the only funds going into Limelight's bank account were investors' funds, which were used to pay office expenses and salaries. We received no evidence that any of the investors' funds were used to finance any of the identified projects.

[21] None of the investor witnesses had received any return on, or a refund of, their investment in Limelight, which is apparently without or virtually without assets and is not carrying on any active business. It appears that all funds invested in Limelight have been lost and that investors have been left with worthless, illiquid securities. Clearly, Alberta investors have suffered harm as a result of the Respondents' conduct contrary to the registration and prospectus requirements of the Act.

[22] Moreover, Limelight's misconduct may have imperilled the Alberta capital market through ramifications beyond individual investor loss. Investors aware of Limelight's illegal distribution of securities may become wary of and disinclined to invest in exempt market transactions resulting in legitimate issuers being less able to raise funds in the exempt market.

[23] In the circumstances, we believe that Limelight would pose a risk to Alberta investors and the Alberta capital market were it permitted continued unrestricted access to the capital market. We also believe that it is imperative to issue orders alerting not only Limelight but also other issuers that serious disregard for Alberta securities laws, such as occurred here, will result in commensurate sanctions. Therefore, we conclude that it is in the public interest to grant the orders sought by Staff against Limelight.

3. Da Silva and Campbell

[24] In the Merits Decision, we concluded that each of the Respondents engaged in trading and distributing Limelight securities contrary to the registration and prospectus

requirements of the Act and the public interest, conduct that denied Alberta investors protections key to the securities regulatory regime. This was serious misconduct.

[25] Da Silva played a significant role in this serious misconduct. During the Relevant Period, he, as the president and a director of Limelight, was its principal guiding mind. Da Silva instituted the Limelight sales program, hired some of the Limelight salespersons, solicited prospective investors himself, provided information to prospective investors, sold Limelight securities to at least one investor, signed the Purchase Agreements and signed the share certificates issued to investors.

[26] Campbell, too, played a significant role in this serious misconduct. During the Relevant Period, his activities were directly instrumental in the sales of Limelight securities to Alberta investors. Campbell, a director and the vice-president, secretary and treasurer of Limelight, hired Limelight salespersons, trained some if not all of them and supervised or oversaw them. The Limelight salespersons reported to Campbell, and he encouraged them in their selling of Limelight securities to the public. Campbell also solicited prospective investors himself, provided information to prospective investors designed to encourage their investment in Limelight and signed the share certificates issued to investors.

[27] As we found in the Merits Decision, Da Silva and Campbell bear significant responsibility for the selling efforts by or on behalf of Limelight during the Relevant Period, selling efforts that were abusive of the accredited investor exemption. In instituting and overseeing the Limelight sales program and as senior officers of Limelight, Da Silva and Campbell were duty-bound to ascertain what Alberta securities laws required of or on behalf of Limelight to sell Limelight securities and then to ensure compliance with the ascertained legal requirements. Instead, having made no real effort to ascertain the requirements of Alberta securities laws, apparently as a cost-saving measure, Da Silva and Campbell were woefully ill-equipped to ensure compliance with Alberta securities laws, hence the selling efforts by or on behalf of Limelight contrary to the intent of the accredited investor exemption.

[28] Da Silva and Campbell also engaged in other serious misconduct in the Alberta capital market during the Relevant Period. Specifically, Da Silva made a prohibited representation to a prospective investor, contrary to section 92(3)(b) of the Act and the public interest; Campbell made false statements to Staff investigators when he knew or ought reasonably to have known that the Commission was conducting an investigation, contrary to the public interest; and each failed to file reports of exempt distribution as required on behalf of Limelight, contrary to section 7.1(1) of MI 45-103 and section 6.1 of NI 45-106, as the case may be, and the public interest. This misconduct encouraged investor purchases of Limelight securities by creating false expectations as to the potential future value and marketability of Limelight securities and made it more difficult for the Commission to administer and police the securities regulatory regime as well as impairing the transparency of capital market transactions.

[29] There was evidence that Da Silva and Campbell, directors and senior officers of Limelight, recognized that they and Limelight had misconducted themselves in the Alberta capital market. In his Investigative Interview, Da Silva said that, "in hindsight, [Campbell] and I are not the smartest guys that understand the rules of this business" and further that, when securities regulatory authorities began pursuing the issuer whose sales program they had copied – which, we note, was during the Relevant Period – "I realized that what we did then was not right". In a letter to a Staff investigator received 14 March 2006, Campbell stated that "Limelight now realizes that mistakes were made in its filings". As discussed in the Merits Decision, no real effort was made by Da Silva or Campbell to take steps to ensure compliance with Alberta or any other jurisdiction's securities laws and no effort was made to correct filings with the Commission. Further, Da Silva and Campbell chose not to participate in the hearing. In our view, then, there was no evidence that Da Silva or Campbell recognized the *seriousness* of their, or Limelight's, misconduct.

[30] While there was no evidence before us of sanctions against Da Silva or Campbell relating to capital market activities, Da Silva, in his Investigative Interview, acknowledged prior misconduct in the capital markets by himself and Campbell in relation to the issuer whose sales program they had copied. Further, despite Da Silva's acknowledged realization during the Relevant Period that he, Campbell and Limelight were misconducting themselves in the Alberta capital market – about which we believe Da Silva, as an individual with eight years' experience as a licensed broker, should have been aware sooner – Da Silva continued to engage, and permitted or encouraged others to engage, in activities contrary to the intent of the accredited investor exemption.

[31] Alberta investors have been harmed and the integrity and reputation of the Alberta capital market have been put at risk by Da Silva's and Campbell's misconduct. As we noted above, apparently all funds invested in Limelight have been lost and investors have been left with unsaleable securities with no realistic hope of recouping any of their investment. Further, knowledge of Da Silva's and Campbell's misconduct in the capital market may discourage investors from investing in exempt market transactions or participating in other public financings.

[32] Having regard to the seriousness of Da Silva's and Campbell's misconduct, their disconcerting failure to recognize the seriousness of their misconduct, and the harm caused, we believe that they would pose a serious risk to Alberta investors and the Alberta capital market if their future access to the capital market is not significantly curtailed. We also believe that it is crucial to issue orders alerting not only Da Silva and Campbell but also others inclined to engage in similar misconduct that failure to comply with the rules affording them the privilege of access to the Alberta capital market will result in harsh consequences.

[33] For these reasons, we conclude that it is in the public interest to order that Da Silva cease trading in or purchasing securities or exchange contracts, be denied the use of all exemptions under Alberta securities laws and be banned from acting as a director or officer of any issuer, in each case for ten years, and that similar orders be made in respect of Campbell, in each case for eight years.

[34] In considering whether, or what, administrative penalties are appropriate, we note that, here, as is often the case, Da Silva's and Campbell's contraventions of or failures to comply with Alberta securities laws were apparently motivated by financial or economic considerations. During the Relevant Period, Da Silva alone had signing authority for Limelight's bank account, into which investors' funds were deposited and from which office expenses and salaries were paid. Da Silva was presumably the recipient of some of these funds, and in his Investigative Interview Campbell acknowledged his receipt of some of these funds in the form of salary. In the circumstances, monetary administrative penalties would be particularly apposite deterrents.

[35] Having regard to Da Silva's and Campbell's serious contraventions of or failures to comply with Alberta securities laws – for each of which an administrative penalty to a maximum of $1 million is available – and the need for significant specific and general deterrent measures in respect of Da Silva and Campbell and like-minded others, we also conclude that it is in the public interest to order that Da Silva pay an administrative penalty of $100,000 and that Campbell pay an administrative penalty of $75,000.

4. Respondent Salespersons

[36] Limelight salespersons, including the Respondent Salespersons, were employed by Da Silva and Campbell during the Relevant Period to conduct solicitations of prospective investors by telephone and otherwise for the sole purpose of selling Limelight securities to them. The Respondent Salespersons directly solicited and encouraged prospective Alberta investors to purchase Limelight securities and they, together with other Limelight salespersons, were directly responsible for many of the sales of Limelight securities to Alberta investors. Throughout, the Respondent Salespersons failed to consider the legality of the Limelight sales program and their role in it. In these ways, the Respondent Salespersons engaged in conduct contrary to the registration and prospectus requirements of the Act and the public interest, depriving investors of protections key to the securities regulatory regime. This was serious misconduct.

[37] Moore, Simonsen, O'Brien and Ulfan also engaged in other serious misconduct in the Alberta capital market during the Relevant Period. Specifically, they made prohibited representations to prospective investors, contrary to section 92(3)(b) of the Act and the public interest, which created false expectations as to the potential future value and marketability of Limelight securities, obviously with the intent of persuading prospective investors to purchase Limelight securities.

[38] There was no evidence that McCarty, Moore, Simonsen, O'Brien or Clynes recognized the seriousness of their misconduct. They chose not to participate in the hearing.

[39] In the Merits Decision, we found that, without the consent or knowledge of investor witness DM, Ulfan took DM's funds that he had agreed to invest in Limelight and converted them into an investment in MC Ltd., which we concluded was a particularly egregious act of illegal trading and distributing of securities.

[40] Ulfan demonstrated little in the way of recognition of the seriousness of his misconduct in his letter to the panel dated 2 October 2007 and faxed 7 October 2007, in which he disputed the evidence of investor witness DM, on which our findings of Ulfan's misconduct were largely based. We note that little weight can be accorded the contents of Ulfan's letter, unsworn and untested by cross-examination. The evidence of DM – his testimony and his documentary evidence consistent therewith – was and remains proof to the requisite standard of Ulfan's misconduct as found in the Merits Decision. Apart from his letter, Ulfan chose not to participate in the hearing.

[41] We acknowledge and take into consideration that there was no evidence before us of prior misconduct in the capital market by the Respondent Salespersons or of sanctions against them relating to capital market activities.

[42] The Respondent Salespersons' contraventions of the registration and prospectus requirements of the Act and the other misconduct of Moore, Simonsen, O'Brien and Ulfan have harmed Alberta investors and put the Alberta capital market at risk, as we noted above. Unregistered trading and illegal distributions of securities are serious matters as such illegal activity jeopardizes the entire system of exempt market financings. Legitimate users of exemptions may suffer, through association as it becomes more difficult to raise funds from a sceptical public or perhaps more permanently were regulators to dismantle the exemptions in response to continued abuses of the exemptions and investor losses.

[43] Considering the seriousness of the Respondent Salespersons' misconduct, their failure to recognize the seriousness of their misconduct, and the harm caused, we are convinced that they would pose a risk to Alberta investors and the Alberta capital market unless we intervene with protective and deterrent orders barring them from the capital market for some time. Based on their respective roles in the trades and distributions of Limelight securities, our concern in this regard is somewhat greater in respect of Moore, Simonsen and O'Brien and greater still in respect of Ulfan.

[44] In the circumstances, we believe that it is necessary to order relatively significant sanctions adequate to the tasks of deterring the Respondent Salespersons from engaging in similar misconduct and of dissuading others tempted to engage in similar misconduct.

[45] For these reasons, we conclude that it is in the public interest to issue orders that differ somewhat from those sought by Staff against the Respondent Salespersons as follows: Ulfan must cease trading in or purchasing securities or exchange contracts and he is denied the use of all exemptions under Alberta securities laws, in each case for seven years, and he must pay an administrative penalty of $50,000; each of Moore, Simonsen and O'Brien must cease trading in or purchasing securities or exchange contracts and each is denied the use of all exemptions under Alberta securities laws, in each case for five years, and each must pay an administrative penalty of $10,000; and each of McCarty and Clynes must cease trading in or purchasing securities or exchange contracts and each is denied the use of all exemptions under Alberta securities laws, in each case for three years, and each must pay an administrative penalty of $5,000.

D. Sanctions Ordered

[46] For the reasons given, we make the following orders in the public interest:

[47] In respect of Limelight, we order, under sections 198(1)(b) and (c) of the Act, that it must cease trading in or purchasing securities and that all of the exemptions contained in the Alberta securities laws do not apply to it until a prospectus is filed with the Commission and a receipt issued therefor.

[48] In respect of Da Silva, we order:

(a) under sections 198(1)(b) and (c) of the Act, that he must cease trading in or purchasing securities or exchange contracts and that all of the exemptions contained in the Alberta securities laws do not apply to him, in each case for ten years;

(b) under sections 198(1)(d) and (e) of the Act, that he must resign any position that he holds as a director or officer of any issuer and that for ten years he is prohibited from becoming or acting as a director or officer (or both) of any issuer; and

(c) under section 199 of the Act, that he must pay an administrative penalty in the amount of $100,000.

[49] In respect of Campbell, we order:

(a) under sections 198(1)(b) and (c) of the Act, that he must cease trading in or purchasing securities or exchange contracts and that all of the exemptions contained in the Alberta securities laws do not apply to him, in each case for eight years;

(b) under sections 198(1)(d) and (e) of the Act, that he must resign any position that he holds as a director or officer of any issuer and that for eight years he is

prohibited from becoming or acting as a director or officer (or both) of any issuer; and

(c) under section 199 of the Act, that he must pay an administrative penalty in the amount of $75,000.

[50] In respect of Ulfan, we order:

(a) under sections 198(1)(b) and (c) of the Act, that he must cease trading in or purchasing securities or exchange contracts and that all of the exemptions contained in the Alberta securities laws do not apply to him, in each case for seven years; and

(b) under section 199 of the Act, that he must pay an administrative penalty in the amount of $50,000.

[51] In respect of Moore, Simonsen and O'Brien, we order:

(a) under sections 198(1)(b) and (c) of the Act, that each of them must cease trading in or purchasing securities or exchange contracts and that all of the exemptions contained in the Alberta securities laws do not apply to each of them, in each case for five years; and

(b) under section 199 of the Act, that each of them must pay an administrative penalty in the amount of $10,000.

[52] In respect of McCarty and Clynes, we order:

(a) under sections 198(1)(b) and (c) of the Act, that each of them must cease trading in or purchasing securities or exchange contracts and that all of the exemptions contained in the Alberta securities laws do not apply to each of them, in each case for three years; and

(b) under section 199 of the Act, that each of them must pay an administrative penalty in the amount of $5,000.

III. COSTS

[53] Invoking section 202 of the Act, Staff also seek orders for investigation and hearing costs against certain of the Respondents. Specifically, they ask that:

(a) each of Da Silva and Campbell be ordered to pay costs in the amount of $20,000;

(b) Ulfan be ordered to pay costs in the amount of $12,500; and

(c) each of McCarty, Moore, Simonsen, O'Brien and Clynes be ordered to pay costs in the amount of $2,500.

[54] In support of their application for costs orders against certain of the Respondents, Staff provided us with a one-page written summary of their investigation and hearing costs totalling approximately $65,500, comprising some $44,500 in investigation costs and some $21,000 in hearing costs. We are satisfied that the costs claimed by Staff are the types of costs for which costs orders can be made under section 202 of the Act and the regulations.

[55] A costs order is not made to sanction or to punish. Instead, directed at procedural efficiency, a costs order is a means of recovering from a respondent an appropriate portion of the costs incurred by the Commission in bringing a public interest regulatory proceeding against the respondent. Generally, it is appropriate that a respondent be ordered to pay at least some of the investigation and hearing costs incurred in pursuing allegations sustained against the respondent. In making a costs order, our focus is on the conduct of the respondent relative to the investigation and hearing, with a view to reflecting the respondent's contribution, or lack thereof, to the efficient resolution of the proceeding and to promoting the efficient resolution of future proceedings by future respondents.

[56] In deciding the issue of costs orders, we first note that Da Silva and Campbell played key roles in the illegal trades and distributions of Limelight securities and thus were focal points during the hearing and presumably of the investigation and the hearing preparation. We next note that the quantum of the total investigation and hearing costs claimed by Staff in this case appears reasonable. However, the total costs claimed must be reduced to take into account an overcharge of some $6,000 for hearing administration costs, which are capped by the regulations at $2,500 for each day or partial day of hearing. We also assume that some of the remaining total costs claimed were incurred in respect of one respondent, a Limelight salesperson, against whom Staff decided not to proceed, costs for which, in our view, none of the Respondents should be responsible. We further assume that some of the remaining total costs claimed were incurred in pursuing one allegation against O'Brien that ultimately was not sustained. Moreover, we are compelled to discount the remaining total costs claimed to reflect the absence of substantiating data – the hours and hourly rates of Staff investigators and lawyers – in the written summary provided. In the circumstances, we believe it reasonable to conclude that investigation and hearing costs of $45,000 – approximately 70% of the total investigation and hearing costs claimed by Staff – are potentially allocable to the Respondents as having been incurred in pursuing the allegations sustained against them.

[57] Mindful of the respective roles of the Respondents in the illegal trades and distributions of Limelight securities, we consider that none of them made any efforts to contribute to the efficient resolution of this proceeding. Rather, Da Silva and Campbell

(and through them, Limelight) and the Respondent Salespersons put the Commission to the cost of a full investigation and hearing.

[58] For these reasons, we consider that it is appropriate to order under section 202 of the Act that:

(a) each of Da Silva and Campbell pay, subject to the regulations, $12,000 towards the costs of the investigation and hearing;

(b) Ulfan pay, subject to the regulations, $8,500 towards the costs of the investigation and hearing; and

(c) each of McCarty, Moore, Simonsen, O'Brien and Clynes pay, subject to the regulations, $2,500 towards the costs of the investigation and hearing.

IV. PROCEEDING CONCLUDED

[59] The Interim Cease Trade Order issued against certain of the Respondents on 13 April 2006 and extended on 26 April 2006 expires by its terms with the issuance of this decision.

[60] This proceeding is concluded.

12 December 2007

For the Commission:

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Dennis A. Anderson, FCA

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