

IN THE MATTER OF
The *Securities Act*
S.N.B. 2004, c. S-5.5, as amended

- and -

IN THE MATTER OF
FIRST GLOBAL VENTURES, S.A., ABRAHAM H. GROSSMAN (also known as AL GROSSMAN or ALLEN GROSSMAN) and ALAN MARSH SHUMAN (also known as AL MARSH or ALAN MARSH)

DECISION ON ADMINISTRATIVE PENALTIES AND COSTS

Date of Hearing on Administrative Penalties and Costs: 21 April 2008

Date of Decision on Administrative Penalties and Costs: 30 May 2008

Panel:

David T. Hashey, Q.C., Panel Chair

Hugh J. Flemming, Q.C., Panel Member

Donne W. Smith, Panel Member

Representatives:

Jake van der Laan

For Staff of the New Brunswick
Securities Commission

IN THE MATTER OF
The Securities Act
S.N.B. 2004, c. S-5.5, as amended

- and -

IN THE MATTER OF
FIRST GLOBAL VENTURES, S.A., ABRAHAM H. GROSSMAN (also known as AL GROSSMAN or ALLEN GROSSMAN) and ALAN MARSH SHUMAN (also known as AL MARSH or ALAN MARSH) (together the "Respondents")

DECISION ON ADMINISTRATIVE PENALTIES AND COSTS

1. Brief Summary of Merits Decision

[1] On 21 February 2008 the Panel issued its Decision on the Merits and Reasons for the Decision ("Merits Decision") in this matter.

[2] The Panel found that the Respondents acted contrary to the public interest and contravened sections 58, 45 and 71 of the *Securities Act* ("Act"). The Respondents, none of whom were registered with the Commission, traded in securities in First Global Ventures, S.A. ("FGV") by soliciting New Brunswick residents to purchase shares in FGV. The Respondents also made false and misleading representations to New Brunswick residents on the FGV website and by other means.

[3] On 14 June 2006, the Panel held that it was in the public interest to issue permanent cease trade orders ("Permanent Orders") against the respondents FGV and Allen Grossman ("Grossman"). Alan Marsh Shuman ("Shuman") was added as a respondent on 1 November 2006. As an officer of FGV, he was cease traded by the Permanent Orders. Reasons for the Permanent Orders were

given as part of the Merits Decision. The Panel also found that the Respondents breached the Permanent Orders.

[4] The Panel advised, in the Merits Decision, that prior to rendering a decision on administrative penalties and costs it would review the parties' submissions on these issues. The Panel provided the parties with 30 days to make any further written representations, and scheduled a hearing on 21 April 2008 to consider oral arguments. Only Staff attended the hearing. None of the Respondents appeared, with counsel or otherwise.

[5] What now follows are the Panel's reasons for decision on the imposition and quantum of administrative penalties and costs in regards to the Respondents. This Decision on Administrative Penalties and Costs is to be read in conjunction with the Merits Decision.

2. Decision on Administrative Penalties

a. Submissions of Parties

[6] Counsel for Staff of the Commission ("Staff") made oral submissions on 21 April 2008 on the imposition and quantum of administrative penalties and costs, and relied on written submissions which had been filed on 22 November 2006 and on 16 August 2007.

[7] Staff submitted that it was in the public interest that the respondents Grossman and Shuman each pay an administrative penalty of at least \$100,000.00. Staff submitted that penalties of this amount are consistent with the serious and harmful nature of Grossman's and Shuman's activities, particularly after cease trade orders were issued by this Commission and others.

[8] Counsel for Grossman filed written submissions on administrative penalties on 27 March 2008. Grossman submitted that due to mitigating factors such as Grossman's cooperation with Staff's investigation and his acknowledgement of the seriousness of the proceedings, an administrative penalty of \$12,500.00

would be appropriate. Neither Grossman nor his counsel appeared to make oral submissions on 21 April 2008.

[9] Prior to the 21 April 2008 hearing date, Grossman personally sent two letters to Staff, dated 12 April 2008 and 17 April 2008 (“Grossman’s Letters”), wherein he advised that he had terminated his counsel. Grossman requested that Staff bring these letters to the attention of the Panel on 21 April 2008.

[10] In Grossman’s Letters, Grossman advised that he was filing a complaint about his former counsel to the Law Society of Upper Canada. Grossman requested a “roll back of the decisions” of the panel, and that the Panel start the matter over.

[11] It is the Panel’s position that the final decision on the merits has been made in this matter, as evidenced by the Merits Decision. Grossman was provided an opportunity to attend on 21 April 2008 to make oral submissions on administrative penalties and costs. Grossman did not attend. The Panel did consider Grossman’s written submission on administrative penalties, which was filed on 27 March 2008 by Grossman’s former counsel (while still on the record for Grossman).

[12] Despite being served with the Merits Decision by both personal service and – in the case of FGV – via fax, FGV and Shuman did not appear on 21 April 2008 to make oral submissions. Neither FGV nor Shuman filed written submissions on administrative penalties or costs.

b. Law

[13] In the Merits Decision, the Panel determined that the Respondents contravened New Brunswick securities law. Given that permanent cease trade orders were issued previously against the Respondents, this decision concerns whether it is in the public interest, in the context of the Commission’s mandate, to impose administrative penalties and costs.

[14] As stated in the Merits Decision, the Commission's mandate is to provide protection to New Brunswick investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets in New Brunswick.

[15] Section 186 of the *Act* empowers the Commission to impose administrative penalties:

186(1)The Commission, after a hearing, may order a person to pay an administrative penalty of not more than \$750,000 if the Commission

(a) determines that the person has contravened or failed to comply with New Brunswick securities law, and

(b) is of the opinion that it is in the public interest to make the order.

186(2)The Commission may make an order under this section notwithstanding the imposition of any other penalty on the person or the making of any other order by the Commission related to the same matter.

[16] While stressing that each case must be decided on its own facts, this Commission, in its decision in *Limelight Capital Management Ltd. et al.*, issued on 17 August 2007, enunciated several factors to consider when assessing an administrative penalty, including:

- The seriousness of the respondent's conduct and whether the respondent recognizes the seriousness of the improper conduct;
- Any harm suffered by investors as a result of the conduct;
- The damage done to the integrity of the capital markets;
- The need to deter others who participate in the capital markets from engaging in similar conduct;
- The need to demonstrate the consequences of inappropriate conduct to others who participate in the capital markets;

- The respondent's experience, reputation and previous activity in the capital markets, including any sanctions;
- The extent to which the respondent was enriched;
- Previous decisions in similar circumstances; and
- Any mitigating factors.

Similar factors have been accepted by the Alberta, British Columbia and Ontario Securities Commissions in decisions involving the imposition of administrative penalties.

[17] As set out in *Limelight* and the Ontario Securities Commission's decision in *Re Chung*, 2005 CarswellOnt 8269, both general and specific deterrence are necessary and appropriate considerations when deciding what sanctions are in the public interest. They are also appropriate considerations when making orders that are both protective and preventative.

[18] The Commission has issued several recent decisions imposing administrative penalties. In deciding on the imposition and quantum of administrative penalties in this matter, the Panel reviewed and considered prior decisions of the Commission. In particular, the Panel considered the *Limelight* decision, which involved similar circumstances.

c. Analysis

i. FGV

[19] In the Merits Decision, the Panel held that FGV contravened sections 45 and 71 of the *Act* by trading in securities in New Brunswick without being registered with the Commission and without filing a prospectus. The Panel also held that FGV, through direct misrepresentations made by its sales agents and through misrepresentations on its website, contravened subsections 58(2), (3) and (4) of the *Act*.

[20] The actions of FGV were serious and damaged the integrity of New Brunswick's capital markets. Several New Brunswick residents were approached to invest in this company, and many of the residents were called frequently and over an extended period of time. The New Brunswick residents who were targeted had already invested in a company known as Maitland Capital Ltd. ("Maitland"), which – as detailed in the Merits Decision – at all relevant times during this proceeding was the subject of a cease trade order of this Commission.

[21] FGV shares were improperly marketed to Maitland investors to encourage them to exchange their Maitland shares for FGV shares and to avoid problems caused by so-called "regulatory interference" (Merits Decision at paragraph 39) in Maitland.

[22] FGV never registered with the Commission and filed no documentation with the Commission. At no time did it attempt to comply with New Brunswick securities laws. There was no evidence that FGV had any purpose other than to take money from investors. There was no indication that FGV was a legitimate business. In fact, the Panel found that the claims made on FGV's website were blatantly false, and were copied directly from the website of a legitimate business entity. FGV served no purpose other than to separate investors from their money, and FGV used the Commission's involvement in Maitland as a pretext for soliciting investment in FGV.

[23] Solicitations of New Brunswick residents did not stop even after this Commission cease traded FGV, thus showing a blatant disregard for New Brunswick securities law and for the jurisdiction of this Commission. FGV did not appear at any of the hearings and filed no materials in response to the proceedings.

[24] New Brunswick residents did not invest in FGV, despite the repeated solicitations. This, however, does not lessen the seriousness of FGV's actions, which harmed investor confidence in New Brunswick.

[25] In light of these factors and of previous decisions of the Commission concerning the imposition and quantum of administrative penalties, the Panel is of the opinion that FGV's actions merit a substantial administrative penalty, which will demonstrate the consequences of inappropriate conduct to other capital market participants considering similar actions.

[26] The Panel orders, pursuant to subsection 186(1) of the *Act*, that FGV pay an administrative penalty in the amount of \$75,000.00.

ii. Shuman

[27] In the Merits Decision, the Panel found that Shuman contravened sections 45 and 71 of the *Act* through his direct solicitations of New Brunswick residents and through his role in the sales process of FGV. The Panel also found that Shuman contravened subsections 58(2), (3) and (4) of the *Act* when he made misleading statements through his involvement in FGV's direct and web-based solicitations.

[28] Shuman was at all relevant times a director of FGV and presented himself as the "face of FGV" and the person who "made sure that investors understood the nature of the investments they were considering" (Merits Decision at paragraph 69). Shuman also directly contacted New Brunswick residents, including G.G. and G.D., who testified before the Panel.

[29] Shuman's actions were a serious attack on individual New Brunswick residents, and on New Brunswick's capital markets. He made no attempt to abide by New Brunswick securities laws. Though he appeared at one hearing in this matter, he did not testify and filed no formal submissions with the Panel. He submitted one affidavit, but did not make himself available for cross examination

on its contents. Shuman did not appear for the 21 April 2008 hearing or make written submissions. Shuman's actions indicate to the Panel that he does not acknowledge the seriousness of his involvement with FGV, and the harm done to investors and investor confidence. The Panel is not convinced that these proceedings have dissuaded Shuman from undertaking similar harmful activities in the future.

[30] Shuman, as a directing mind and "face" of FGV, is as culpable as FGV for the misrepresentations on FGV's website. Of all the Respondents in this matter, it was Shuman who made direct contact with New Brunswick residents. FGV was cease traded by the Commission in May of 2006. However, Shuman continued his direct solicitations in New Brunswick beyond this date. Shuman's actions show a complete disregard for New Brunswick's securities laws and to the jurisdiction of the Commission.

[31] There was no evidence to indicate by how much Shuman was enriched. However, as previously stated it appears that FGV's sole purpose was the fraudulent raising of money. There was no evidence presented that FGV had any legitimate business purpose.

[32] Despite Shuman's solicitations, no New Brunswick residents invested in FGV. The harm done in New Brunswick was to investor confidence in the capital markets.

[33] As with FGV, because of the factors above and following previous decisions of the Commission on the imposition and quantum of administrative penalties, the Panel is of the opinion that it is in the public interest that a substantial administrative penalty be ordered against Shuman. Shuman directly targeted New Brunswick residents, causing harm to investor confidence in the capital markets in the province. No mitigating factors were presented which would cause the Panel to order a reduced penalty. To the contrary, a substantial administrative penalty is required to demonstrate the consequences

of Shuman's conduct to both Shuman and others who may be tempted to participate in similar enterprises.

[34] The Panel orders, pursuant to subsection 186(1) of the *Act*, that Shuman pay an administrative penalty in the amount of \$75,000.00.

iii. Grossman

[35] In the Merits Decision, the Panel found that Grossman contravened sections 45 and 71 of the *Act* through his involvement in with FGV and its solicitations. The Panel also found that Grossman contravened subsections 58(2), (3) and (4) of the *Act* through his role in the creation and maintenance of the false and misleading FGV website.

[36] Grossman's involvement with FGV was less obvious than that of Shuman. However, the Panel found that Grossman structured his involvement with FGV in a deliberate attempt to cover his actions and mask his role in the company. Adopting a contextual approach, and reviewing the vast amount of evidence presented regarding Grossman's involvement, the Panel held that it was Grossman who was the driving force behind FGV's illegal activities.

[37] Though he had no direct contact with New Brunswick residents, Grossman's activities were just as damaging to New Brunswick investors and to New Brunswick's capital markets as those of Shuman and FGV. Grossman's creation of Introvest as a guise to cover his real role in FGV showed a complete disregard for New Brunswick securities laws, and was an active attempt to circumvent them.

[38] Grossman had previous experience in the marketplace, and during all relevant times was the subject of a temporary cease trade order issued by this Commission in the Maitland matter. The involvement of Maitland shareholders as targets of FGV's solicitations was especially troubling. The fact that Maitland was

subject to cease trade orders was used by Grossman as a marketing tool for FGV.

[39] There was evidence presented that Grossman profited from his involvement in FGV. Through the guise of Introvest, Grossman received over \$161,000.00 from FGV. Again, it appears that FGV's sole function was to improperly raise capital. The Panel found that Introvest's function was to keep FGV running, and to transmit at least part of FGV's capital to Grossman.

[40] Grossman continued his involvement with FGV beyond May 2006, when he and FGV became the subjects of a cease trade order issued by this Commission. As with his creation of Introvest in an attempt to circumvent securities laws, the breach of the cease trade order illustrates Grossman's complete disregard for this Commission's jurisdiction and for New Brunswick's securities laws as a whole. In the Panel's opinion, a strong message must be sent to Grossman and others that such contemptuous behaviour will not be tolerated.

[41] Grossman did participate in the hearing, mainly through counsel. He attended at some hearing dates, but did not testify or make himself available for cross-examination on his affidavit. Though written submissions were filed on his behalf, he did not attend to make oral submissions on administrative penalties.

[42] Grossman submits that there are several mitigating factors which should influence the imposition of an administrative penalty. Grossman advised that he respects the Panel's findings in the Merits Decision regarding his acting contrary to the public interest and that he contravened securities law and failed to comply with the cease trade order. He submits that that he did not intend to contravene securities laws as he believed he was providing consulting services, and that he was cooperative with the Commission's investigation and hearing.

[43] In the Merits Decision, the Panel found that Grossman's use of Introvest was for the purpose of masking his contravention of securities laws, and that

Grossman was the driving force behind FGV. Contrary to Grossman's submissions, the Panel is of the opinion that Grossman intentionally contravened securities laws, and in fact went out of his way to create an elaborate ruse to try to mask these contraventions.

[44] Based on the factors outlined above, the Panel finds that it is in the public interest and in line with previous decisions of the Commission to order a substantial administrative penalty against Grossman in this matter. The Panel is of the opinion that a substantial administrative penalty is required to specifically deter Grossman from similar actions in the future. The Panel also considers a substantial penalty necessary to provide a strong message that such illegal activities will not be tolerated in New Brunswick. The Commission is working diligently to build the capital markets in the province and to protect investors from the actions of people such as Grossman, who through their illegal activities harm individual investors and confidence in New Brunswick's capital markets as a whole.

[45] Though they had differing roles within FGV, both Shuman and Grossman used their roles to act contrary to the public interest and attempt to take money from New Brunswick investors. The Panel finds that both individuals were equally damaging to New Brunswick's capital markets; Shuman through direct solicitations and his role in the sales process, and Grossman through his behind-the-scenes role as the driving force behind FGV's operations and solicitations. Both individuals need to be adequately sanctioned and to provide significant deterrence.

[46] The Panel orders, pursuant to subsection 186(1) of the *Act*, that Grossman pay an administrative penalty in the amount of \$75,000.00.

3. Decision on Costs

[47] Staff presented a costs summary, dated 16 August 2007, in which they detail the investigative and hearing costs incurred in this matter up to that date, and claim total costs in the amount of \$23,033.35.

[48] The Panel accepts the costs summary presented by Staff and orders, pursuant to subsection 185(1) of the *Act*, that the Respondents FGV, Shuman and Grossman shall jointly and severally pay costs in this matter in the amount of \$23,033.35.

Dated this 30 day of May, 2008.

"original signed by"

David T. Hashey, Q.C., Panel Chair

"original signed by"

Donne W. Smith, Panel Member

"original signed by"

Hugh J. Flemming, Q.C., Panel Member

New Brunswick Securities Commission
Suite 300, 85 Charlotte Street
Saint John, New Brunswick
E2L 2J2

Tel: (506) 658-3060

Fax: (506) 658-3059