

IN THE MATTER OF

THE *SECURITIES ACT*,
S.N.B. 2004, c. S-5.5

-and-

IN THE MATTER OF

**GLOBAL PETROLEUM STRATEGIES, LLC,
PETROLEUM UNLIMITED, LLC,
AURORA ESCROW SERVICES, LLC, and
ROGER A. KIMMEL JR.
(RESPONDENTS)**

REASONS FOR DECISION

Date of Order: 20 August 2008

Date of Reasons for Decision: 8 September 2008

Panel:

Donne W. Smith, Panel Chair

Robert M. Shannon, Panel Member

Counsel:

Mark McElman

For Staff of the New Brunswick
Securities Commission

IN THE MATTER OF

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REASONS FOR DECISION

1. BACKGROUND

[1] This matter involves an application by Staff (Staff) of the New Brunswick Securities Commission (Commission) for a reciprocal order under paragraph 184(1.1)(c) of the *Securities Act (Act)* against the Respondents Global Petroleum Strategies, LLC (Global); Petroleum Unlimited, LLC (Petroleum); Aurora Escrow Services, LLC (Aurora); and Roger A. Kimmel Jr. (Kimmel). Paragraph 184(1.1)(c) of the *Act* states:

184(1.1)In addition to the power to make orders under subsection [184] (1), the Commission may, after providing an opportunity to be heard, make one or more of the orders referred to in paragraphs (1)(a) to (d) and (1)(g) to (i) against a person if the person

(c)is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person

[2] Staff filed their application (Application) on 17 July 2008. Staff filed a supporting affidavit (Investigator's Affidavit) of Senior Investigator Ed LeBlanc (Investigator), sworn 17 July 2008, in support of the Application. Staff's grounds for the Application were that orders had been made by the Alberta Securities Commission (ASC) and the Saskatchewan Financial Services Commission (SFSC) imposing sanctions, conditions, restrictions or requirement on the Respondents, and that it is in the public interest to grant the Order. Staff requested the following sanctions be granted against the Respondents:

- (a) Pursuant to subsection 184(1)(c)(i) of the *Act*, all trading in securities of Global shall cease (including, without limitation, the solicitation of trades, or any acts constituting attempts or acts in furtherance of trading, in such securities);
- (b) Pursuant to subsection 184(1)(c)(ii) of the *Act*, the Respondents shall cease trading in all securities (including, without limitation, the solicitation of trades in securities or any acts constituting attempts or acts in furtherance of trading in securities); and
- (c) Pursuant to subsection 184(1)(d) of the *Act*, any exemption in New Brunswick securities law do not apply to the Respondents.

[3] In response to the Application, the Commission issued a Notice of Application on 17 July 2008. It provided notice to the Respondents that an Application had been made to the Commission for an order pursuant to paragraph 184(1.1)(c), and that the Respondents have a right to be heard with respect to Staff's Application. The Notice of Application advised the Respondents to request a hearing by 1 August 2008. The Notice of Application also advised the Respondents that if they failed to notify the Commission, an order contrary to their interest might be issued with no further notice.

[4] Staff filed an affidavit of service (Affidavit of Service) on 11 August 2008, outlining their service of the Notice of Application, Application and Investigator's Affidavit, along with a copy of an ASC extending order dated 17 July 2008 (Documents) on the Respondents. The Affidavit of Service detailed how on 18 July 2008, Staff successfully served the Respondents with the Documents via courier, fax and email at their respective last known addresses. The addresses were received from enforcement counsel at the ASC.

[5] On 23 July 2008, Kimmel contacted the Commission to request the Documents be sent to a designated individual at a different email address. Staff sent the Documents to the requested email address and their receipt was acknowledged by email.

[6] The Panel is satisfied that all four Respondents received notice of these proceedings. Despite proper notice, no Respondent requested an opportunity to be heard in response to Staff's Application.

2. FACTS

[7] The Panel considered the Documents and the Affidavit of Service in reaching its decision. The Panel also received and reviewed written submissions filed by Staff on 11 August 2008. Staff's evidence included copies of affidavits filed by the ASC in support of the ASC Order.

a. The ASC and SFSC orders

[8] On 3 July 2008, the ASC issued a temporary order (ASC Order) against the Respondents providing that:

- (a) All trading in securities of Petroleum cease;
- (b) The Respondents cease trading in all securities; and
- (c) All exemptions contained in Alberta securities laws do not apply to the Respondents.

[9] The ASC Order is still in force; it was extended on 17 July 2008 until the hearing of the matter is concluded and a decision is rendered, unless otherwise ordered.

[10] The SFSC issued an order against the Respondents on 14 July 2008 (SFSC Order), which was extended on 29 July 2008. The SFSC Order remains in force until the SFSC is provided with satisfactory information to enable it to make a further order in this matter. The SFSC Order provides that:

- (a) All exemptions in Saskatchewan securities laws do not apply to the Respondents;
- (b) The Respondents cease trading in all securities and exchange contracts; and
- (c) The Respondents cease advising with respect to any securities, trades

or exchange contracts.

b. The Respondents

[11] According to materials filed in support of the ASC Order and information contained in the SFSC Order, Global is a Wyoming company operating out of Florida which holds itself out as raising investment capital for independent oil companies. Petroleum and Aurora are also Wyoming companies; Petroleum engaged Global to sell Petroleum's securities, while Aurora is the escrow agent for the securities of Petroleum. Kimmel is the president and chief executive officer of Petroleum, and the manager, director and president of Aurora.

[12] The Respondents were cease traded in Alberta and Saskatchewan based on allegations that Global had been contacting residents of several Canadian provinces, including Alberta and Saskatchewan to solicit the purchase of Petroleum securities. Solicitations were mainly by fax, and promised high returns. Affidavits filed in support of the ASC Order state that a representative of Global advised ASC enforcement staff that of the investments raised by Global, 40% of the clients are Canadians, with investors from various parts of Canada including New Brunswick.

[13] The Investigator's Affidavit states that he has been unable to ascertain who the New Brunswick investors are.

[14] None of the Respondents are registered to trade securities in New Brunswick, and they have not filed any materials with the Commission which would allow them to trade securities in New Brunswick.

3. ANALYSIS AND DECISION

[15] Staff's application was made for an order under paragraph 184(1.1)(c) of the *Act*. Before considering the issuance of such an order, a Panel must be satisfied that the Respondents were provided an opportunity to be heard, and that each Respondent is a person who is subject to an order made by a

securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person. For the reasons outlined above, the Panel is satisfied that these two conditions have been met.

[16] Next, the Panel must consider if it is in the public interest to issue the order requested by Staff. The definition of what constitutes being in the public interest in the context of reciprocal orders was addressed by Panels of this Commission in the *Al-tar Energy Corp. et al.* decision, issued on 17 December 2007, and the *Adcapital Industries Inc. et al.* decision, issued 19 August 2008. The Commission held that it is appropriate to grant an order under the reciprocal order provision when there is compelling evidence that such an order would serve a protective purpose for New Brunswick investors and capital markets.

[17] The Respondents' bulk solicitations are broad and have affected several Canadian provinces. Two Canadian securities regulators have been concerned enough with the Respondents' actions that they issued *ex parte* temporary cease trade orders, which have since been extended. As stated by the Panel in *Adcapital*, the issuance of an order by another recognized securities regulator – in this case, two such regulators – is a *prima facie* basis for reciprocation.

[18] The Respondents' solicitation takes advantage of the media focus on rising oil and gas prices. This Commission has issued cease trade orders against respondents based in the United States and elsewhere attempting similar solicitations in New Brunswick, namely broad phone, fax or email based schemes promising large returns. Examples include *Meisner Inc. S.A. et al.*, decision issued on 22 October 2007 and *Saxon Financial Services Ltd. et al.*, decision issued on 9 October 2007. These extensive, complicated schemes have the potential to harm a large number of residents across the world, including in New Brunswick.

[19] The Panel is satisfied that the order requested by Staff is appropriate in this case and serves a protective purpose in New Brunswick. The Commission is familiar with the types of activities being attempted by the Respondents, and

Staff have presented evidence that the New Brunswick market is one that the Respondents have either already accessed or may seek to access. It is important that New Brunswick investors be provided the same cease trading protections currently afforded to Alberta and Saskatchewan investors.

[20] The Panel therefore finds it in the public interest to make the order requested by Staff, as set out in paragraph [2], above. The Panel also finds it in the public interest to ensure the order remains in effect for the same duration as either the ASC Order or the SFSC Order, as they are from time to time extended or made permanent.

[21] The above constitutes the Panel's reasons for decision for its Order issued on 20 August 2008 pursuant to paragraph 184(1.1)(c) of the *Act*.

Dated at the City of Saint John this 8th day of September, 2008.

"original signed by"

Donne W. Smith, Panel Chair

"original signed by"

Robert M. Shannon, Panel Member

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