

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

- and -

IN THE MATTER OF  
**STRATEGIC ENERGY PARTNERS and  
JIM PALMER  
(RESPONDENTS)**

**REASONS FOR DECISION**

Date of Hearing: 25 February 2009  
Date of Order: 25 February 2009  
Date of Reasons for Decision: 20 May 2009

Panel:

Donne W. Smith, Panel Chair  
Kenneth Savage, Panel Member  
Sheldon Lee, Panel Member

Counsel:

Jake van der Laan

For Staff of the New Brunswick  
Securities Commission

IN THE MATTER OF

**STRATEGIC ENERGY PARTNERS and  
JIM PALMER**

**(RESPONDENTS)**

**REASONS FOR DECISION**

**1. BACKGROUND**

[1] On 9 February 2009, Staff (Staff) of the New Brunswick Securities Commission (Commission) filed a Statement of Allegations against the Respondents Strategic Energy Partners (SEP) and Jim Palmer (Palmer), in which they alleged that the Respondents violated sections 45 and 162 of the New Brunswick *Securities Act (Act)*. Along with the Statement of Allegations, Staff also filed two supporting affidavits: an affidavit of Commission Senior Investigator Ed LeBlanc (Investigator) sworn 9 February 2009 (LeBlanc Affidavit) and an affidavit of Commission Legal Counsel Mark McElman sworn 9 February 2009 (McElman Affidavit).

[2] A Notice of Hearing was issued on 10 February 2009, scheduling the hearing in this matter for 25 February 2009. Staff advised in the Notice of Hearing and attached Statement of Allegations that they would be seeking a permanent order pursuant to subparagraph 184(1)(c)(ii) and paragraph 184(1)(d) of the *Act* that the Respondents cease trading in all securities, and that any exemptions under New Brunswick securities law do not apply to the Respondents. The Notice of Hearing also advised the Respondents that if they failed to attend the hearing, the hearing may proceed in their absence and a decision or order contrary to their interests may be issued.

[3] The hearing proceeded as scheduled on 25 February 2009. Staff counsel appeared to make oral submissions, in addition to the written pre-hearing submissions

filed on 18 February 2009. Neither of the Respondents appeared at the hearing, and no one appeared on their behalf.

[4] At the hearing, Staff presented an Affidavit of Service of Huguette Marie Champagne, Administrative Support Officer with the Commission, sworn 17 February 2009. This Affidavit of Service outlines the service – by fax and email – of the Notice of Hearing and attached Statement of Allegations, the LeBlanc Affidavit and the McElman Affidavit (Documents) on the Respondents. The Documents were served on the Respondents via fax on 13 February 2009 to the office fax number of SEP; a fax confirmation sheet showing successful delivery was attached to the Affidavit of Service. The Documents were also served via email on the same date (13 February 2009) to three separate SEP email addresses, including Palmer’s SEP email address. Delivery confirmations were received for each email address.

[5] The Panel is satisfied that the Affidavit of Service outlines successful service of the Documents on the Respondents on 13 February 2009, and that this service provided sufficient notice to the Respondents of both the 25 February 2009 hearing date and of the allegations against them. Despite proper notice, the Respondents did not appear at the hearing and did not contact the Commission at any time. The hearing proceeded in the absence of the Respondents.

[6] The evidence presented by Staff consisted of the Affidavit of Service of Huguette Champagne, the LeBlanc Affidavit and the McElman Affidavit. The LeBlanc Affidavit contained evidence the Investigator obtained during his investigation, including his contact with a New Brunswick investor, L.T., who had been solicited by Palmer on behalf of SEP. The McElman Affidavit contained evidence obtained through internet searches related to SEP, and evidence of Staff’s correspondence with SEP requesting information. The Respondents did not file any materials with the Commission.

## 2. THE FACTS

[7] SEP holds itself out as a business operating out of Geneva, Switzerland. Palmer is a salesperson from SEP. SEP maintains a website at [strategicenergypartners.net](http://strategicenergypartners.net) (SEP Website). The SEP Website does not provide a physical address for SEP, and does not list any associated individuals. The only contact information provided on the SEP Website consists of email addresses and a telephone and fax number in Geneva, Switzerland.

[8] SEP appears to be in the business of reselling securities of other companies. In August 2008, the Investigator received a complaint from L.T., a New Brunswick resident, concerning a telephone solicitation by SEP, to purchase shares in a company called Clean Coal Technologies Inc. (CCTI). CCTI is a United States issuer which trades on Pink Sheets, a computerized bid-ask style quotation system based in the United States.

[9] When contacted by Staff about their relationship to SEP, the CEO of CCTI advised Staff that CCTI has no relationship to SEP, and that they have had issues with third parties selling issued stock to the public in the secondary market. CCTI's website contains a warning about third parties who are not affiliated with CCTI who are promoting its stock. CCTI added SEP to this list on 28 January 2009.

[10] During subsequent calls with the Investigator in August and September of 2008, L.T. advised the Investigator that he had been contacted by an SEP salesperson called "James", who solicited him to purchase 1,000 shares of CCTI at \$4.00 per share. Despite advising the salesperson that he was not interested, L.T. continued to receive calls from SEP salespeople, and received an email solicitation. L.T. advised the Investigator that the SEP salespeople were very pushy, and that one used profane language when L.T. said he was not interested in the solicitation.

[11] L.T. later contacted the Investigator – in January of 2009 – advising that he had again been contacted on behalf of SEP, this time by a person who identified himself as Palmer. L.T. was unable to provide the Investigator with any written details of the offer; when L.T. requested written details from Palmer he was referred to the SEP Website.

[12] The SEP Website, upon further investigation by Staff in January 2009, appeared to be copied from the website of an oil and gas company. The SEP Website domain name was registered by a company called Domains by Proxy, which offers the service of obscuring domain registration information.

[13] On 23 January 2009, Staff sent a letter to SEP's fax number advising that Staff were aware of SEP's solicitation of a New Brunswick resident, and requesting specific information about the nature and extent of SEP's trading activities in New Brunswick, and its dealings with New Brunswick residents. Staff asked for the information to be provided within 10 days. SEP has not responded to Staff's request.

[14] Neither SEP nor Palmer are registered to trade securities in New Brunswick.

### **3. LAW**

#### ***a. Jurisdiction and Mandate of the Commission***

[15] The Commission has a broad public interest mandate: the protection of New Brunswick investors and the protection of the integrity of New Brunswick's capital markets. The requirements of the *Act* are geared towards the protection of the public; the Commission's role as defined in the *Act* is to regulate the solicitation and sale of securities within the province.

[16] Staff are seeking orders pursuant to subparagraph 184(i)(c)(ii) and paragraph 184(1)(d) of the *Act*, that the Respondents permanently cease trading in all securities, and that any exemptions in New Brunswick securities law do permanently not apply to the Respondents. The Panel may make an order under section 184 only if the Panel finds it in the public interest to do so. The Commission discussed its public interest jurisdiction in its decision in the *Meisner Inc. et al.* matter, issued on 22 October 2007, and cited in the Commission's recent decision in *First Alliance Management Inc. et al.*, issued on 11 December 2008:

[22] The Commission's public interest jurisdiction under section 184 of the *Act* is animated by the purposes of the *Act*, namely to provide protection to investors from unfair, improper or fraudulent practices and to

foster fair and efficient capital markets and confidence in capital markets.

[23] As stated in *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 (Ont. Securities Comm.), the Commission's public interest jurisdiction is protective and preventative and is intended to be exercised to prevent likely future harm to capital markets.

***b. Alleged Breaches of Securities Law***

[17] Staff alleged that the Respondents breached section 45 of the *Act* by trading in securities in New Brunswick without being registered. Section 45 states:

**45** Unless exempted under this Act or the regulations, no person shall

(a) trade in a security or act as an underwriter unless the person is registered as a dealer, or is registered as a salesperson, as a partner or as an officer of a registered dealer and is acting on behalf of the dealer, or

(b) act as an adviser unless the person is registered as an adviser, or is registered as a representative, as a partner or as an officer of a registered adviser and is acting on behalf of the adviser.

[18] "Trade" is broadly defined in the *Act* as including a sale or disposition of a security for valuable consideration or an attempt to sell or dispose of a security for valuable consideration; and also including an act, advertisement, solicitation or negotiation directly or indirectly in furtherance of a sale or attempt to sell a security.

[19] Staff have also alleged that the Respondents breached section 162 of the *Act*, which requires the following:

**162(1)** A market participant shall keep such books, records and documents as are necessary for the proper recording of the business transactions and financial affairs of the market participant and the transactions that the market participant executes on behalf of others and shall keep such other books, records and documents as are otherwise required under New Brunswick securities law.

**162(2)** A market participant shall deliver to the Commission at such time or times as the Commission, any member of the Commission or any employee of the Commission requires

(a) any of the books, records and documents that are required to be kept by the market participant under New Brunswick securities law, and

(b) any filings, reports or other communications made to any other regulatory agency whether within or outside of New Brunswick.

[20] A “market participant” is defined in the *Act* as including a registrant; a “registrant” is defined in the *Act* as meaning a person who is registered or required to be registered under the *Act* or the regulations. Staff submitted that SEP and Palmer fall within the definition of “registrant”, as they should have been registered given their solicitations in New Brunswick. Therefore, as registrants and market participants, Staff submitted that their letter of 23 January 2009 constituted a demand for information pursuant to subsection 162(2), and that SEP’s refusal to acknowledge or respond to the letter constituted a breach of 162(2).

#### **4. ANALYSIS & CONCLUSIONS**

[21] The Panel accepts Staff’s uncontested evidence that the Respondents – though not registered to trade in securities in the province – solicited a New Brunswick resident to trade in securities during the period of August of 2008 through January of 2009. The Investigator spoke directly with L.T., the New Brunswick resident solicited by SEP, who provided details on SEP and Palmer’s email and telephone solicitations. Also, the Panel agrees with Staff’s submission that the SEP website, which offers securities to investors over the internet, also constitutes an act in furtherance of a trade. The Panel finds that the Respondents breached section 45 of the *Act*.

[22] Numerous decisions of this Commission have addressed the importance of the registration requirements in the *Act*. As stated in this Commission’s decision in *Wealth Pools International, Inc. et al.* (regarding Oagles, Fulton and Tracy), released on 21 July 2008, if market participants do not comply with the registration requirements, “the Commission is deprived of a key means of protecting investors and the integrity of the capital markets”. The Panel finds that the Respondents, through their activities, acted contrary to the public interest.

[23] In relation to Staff’s claim of a breach of section 162, the Panel also accepts Staff’s uncontested evidence – namely the 23 January 2009 letter to SEP – that SEP breached section 162 by failing to comply with Staff’s request for information. Staff’s

request for information was legitimate and arose after Staff's investigation revealed a number of concerning matters. These included not only the solicitation of L.T., but also the nature of SEP's website. The SEP website appears to be copied from another website; it is registered in such a way as to block information on who actually did the registration; and it promotes at least one company – CCTI – which has denied any affiliation with SEP and in fact posted a warning about SEP on its own website.

[24] The Panel accepts Staff's submissions that SEP's actions constitute a breach of section 162. The Panel specifically accepts Staff's submissions, set out in paragraph [20] above, on the application of section 162 to the Respondents in this matter. This interpretation is consistent with the purposes of the *Act* and the mandate of the Commission, which are to protect investors and foster fair and efficient capital markets in New Brunswick. Paragraph 5(b) of the *Act* indicates that the primary means for achieving the purposes of the *Act* are:

- (i) requirements for timely, accurate and efficient disclosure of information;
- (ii) restrictions on fraudulent and unfair market practices and procedures;  
and
- (iii) requirements for the maintenance of high standards of ethics and business conduct to ensure honest and responsible conduct by market participants

A refusal to provide information (or, as in this case, ignoring an information request) is a serious violation of the *Act* and directly impacts the purposes and guiding principles of the *Act*. The Panel finds that SEP, in ignoring Staff's information request and therefore breaching section 162, acted contrary to the public interest.

[25] Staff submitted that a cease trade order may have limited direct effect on the Respondents in this case, as all evidence points to SEP being a boiler-room operation, and cease trade orders may do little to dissuade the individuals involved in boiler-rooms from discontinuing their activities under another guise. However, the Panel agrees that issuing the order as requested in this matter is still in the public interest and furthers the Commission's mandate, in that it is important that the public in New Brunswick be made aware of these solicitations and that they are appropriately warned through this process.

[26] The above constitute the Panel's Reasons for their Decision and resulting Order in this matter, issued on 25 February 2009.

Dated this 20 day of May, 2009.

\_\_\_\_\_  
"original signed by"

Donne W. Smith, Panel Chair

\_\_\_\_\_  
"original signed by"

Kenneth Savage, Panel Member

\_\_\_\_\_  
"original signed by"

Sheldon Lee, 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