

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

- and -

IN THE MATTER OF
**RONIN GROUP L.L.C., RONIN OPERATING L.L.C., and
JOE TREVINO, JR.
(RESPONDENTS)**

REASONS FOR DECISION

Date of Hearing: 30 March 2011
Date of Order: 30 March 2011
Date of Reasons for Decision: 14 October 2011

Panel:

Guy G. Couturier, Q.C., Panel Chair
David G. Barry, Q.C., Panel Member
Céline Trifts, Panel Member

Appearances:

Mark McElman

For Staff of the New Brunswick
Securities Commission

No appearances for the Respondents

IN THE MATTER OF

**RONIN GROUP L.L.C., RONIN OPERATING L.L.C., and
JOE TREVINO, JR.
(RESPONDENTS)**

REASONS FOR DECISION

1. BACKGROUND

[1] Staff of the New Brunswick Securities Commission ("Staff") filed a Statement of Allegations against the Respondents with the Secretary of the Commission on 18 February 2011. It alleges that the Respondents were not registered under the *Securities Act* ("Act"), contrary to section 45 of the *Act*, and failed to file a prospectus, contrary to subsection 71(1) of the *Act*, prior to offering securities to a resident of New Brunswick.

[2] Staff sought a permanent cease trading order against each of the Respondents, pursuant to paragraphs 184(1) (c) and 184(1) (d) of the *Act*. It also requested that any exemptions under the *Act* be ordered not to apply to the Respondents.

[3] A hearing was set for 30 March 2011 at the office of the New Brunswick Securities Commission ("Commission"). A Notice of Hearing was issued by the Secretary to the Commission on 4 March 2011 and was served on the Respondents.

[4] On 30 March 2011 a hearing was held and the order requested by Staff was granted. These are the reasons for the decision to grant the order.

2. PRELIMINARY MATTERS

[5] (i) **service**

Subsection 5(1) of Part 5 of Local Rule 15-501 *Procedures for Hearings Before a Panel of the Commission* ("LR 15-501") sets out the manner of service of any notice or document. The normal and usual method of service is by personal delivery. However, subsection

5(1) does permit, at paragraph (f), service to be effected, by "*sending by Electronic Transmission to the Party or the Party's counsel*" the document or notice in question.

[6] In the matter before the Commission, the evidence is that the respondent, Joe Trevino Jr., is not a resident of New Brunswick, or indeed of Canada.¹ The other respondents, Ronin Group L.L.C. and Ronin Operating L.L.C. are corporations of the State of Oklahoma in the United States and have, as their registered agent at all times material, the respondent, Joe Trevino Jr.² There is no evidence that either corporate respondent is registered in New Brunswick as an extra provincial corporation.

[7] Although LR 15-501 provides for a number of ways to serve notices and documents, what is required is that the delivery of the notice occurs. Here the Respondents are not within the jurisdiction and the Commission is satisfied, on the evidence before it, that the Respondents did indeed receive the documentation, relevant to the complaint, as well as the Notice of Hearing.

[8] **(ii) request for adjournment**

Staff counsel Mark McElman states in an Affidavit of Service filed with the Commission³ that Trevino contacted him by email on March 21, 2011 requesting an "*extension before trial*".⁴ Trevino's request was then forwarded to the Secretary. The Commission, having taken notice of Trevino's request, directed the Secretary to schedule a conference call with the Respondent Trevino, to allow him to make his submissions directly to the Panel in support of his request to adjourn the hearing.

[9] The filed material indicates that Trevino was notified by the Secretary, at his email address, of the proposed conference telephone call and given a deadline of 5:00 p.m., Atlantic Time, on 28 March 2011 to respond to the Secretary and to provide any material in support of his request. The Secretary did not receive a response from

¹ Exhibit #7 – LeBlanc Affidavit

² Exhibit # 10 – LeBlanc Affidavit

³ Exhibit # 1

⁴ Exhibit D of Exhibit # 1

Trevino.⁵ Consequently, the Commission proceeded with the hearing of the application as scheduled on 30 March 2011 at 10:00 a.m., Atlantic Time. None of the Respondents appeared, nor did they participate in any manner.

3. CONTEXT

[10] Staff produced, as its sole witness, Senior Investigator Ed LeBlanc (“LeBlanc”). In addition, LeBlanc swore an Affidavit, dated 18 February 2011, (“LeBlanc Affidavit”), that was accepted in evidence. According to LeBlanc, he was “cold-called” by Trevino on behalf of Ronin Group on 10 December 2010. The call was received on a rarely-used telephone number which connects to his office telephone. When LeBlanc asked Trevino where he obtained the telephone number, Trevino explained that he had purchased the number. LeBlanc’s evidence is that the only person to whom he gave this number during the last year was someone from a company called Tycoon Energy Inc. The Commission issued a permanent cease trade order against Tycoon Energy Inc. on 5 January 2011. The allegations made against Tycoon Energy Inc., and the facts in that case, are similar to those in this current matter. Reasons for Decision in the *Tycoon et al.* matter were issued on 8 April 2011 (“*Tycoon*”).

[11] LeBlanc’s evidence is that Trevino solicited his investment in a joint venture involving three oil and gas wells in Oklahoma. Specifically, Trevino told him that with an investment of \$55,000.00, LeBlanc could obtain an interest in three oil and gas wells that Ronin Group L.L.C. was developing. Trevino explained to LeBlanc that the first well was under development, while the other two would be finished by the end of the year.

[12] Trevino forwarded by email promotional documents of Ronin Group L.L.C. to LeBlanc. These documents, attached to the LeBlanc Affidavit, include a promotional “Enterprise Joint Venture” document;⁶ a “Confidential Private Placement Memorandum”⁷ for the enterprise joint venture; and a “Subscription Agreement”.⁸ The

⁵ Exhibit # 2

⁶ Exhibit # 1 of LeBlanc Affidavit

⁷ Exhibit # 1 of LeBlanc Affidavit

⁸ Exhibit # 1 of LeBlanc Affidavit

documents indicate Ronin Operating L.L.C. as being involved in the operation of the three wells.

[13] LeBlanc received a further telephone call from Trevino on 16 December 2010 at which time he asked, and obtained, from Trevino permission to record the conversation. During this conversation, Trevino told LeBlanc that he could see a 100% return on his investment in 18 months. The promotional materials provided projected even greater returns, specifically a return of principal in eight months.

[14] On 20 December 2010, in a further conversation, LeBlanc states in his affidavit that he told Trevino that he was not an "accredited investor", as defined in National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106"). Trevino then indicated that this was not necessary.

[15] LeBlanc subsequently received documentation from Trevino concerning the testing results on the wells. From these documents LeBlanc conducted additional inquiries on the well identification number provided with the test results. He determined that the well identification number was associated to an oil and gas operator named "J.A.". LeBlanc contacted J.A., and when LeBlanc asked about his involvement in the well, J.A. stated that an individual by the name of Joe Trevino had fraudulently used J.A.'s oil and gas operator number to drill the first Ronin well, and that he, J.A., had nothing to do with the well. J.A. further indicated that he had reported these incidents to the local sheriff's office, as well as the Oklahoma oil and gas regulator. LeBlanc confirmed with both the local sheriff and regulator that indeed complaints had been made against a Joe Trevino.

[16] On 31 December 2010 LeBlanc disclosed to Trevino his position with the Commission, and sent a letter to Trevino requesting further information and indicated to Trevino he believed him to be in breach of the *Act*. While Trevino did respond to some of the Investigator's requests for information, when asked to clarify some information or provide further particulars, Trevino became uncooperative, accused the Investigator of

harassing him and became rude and defensive, and ultimately did not provide the information sought.

[17] LeBlanc determined that the Respondents are not and never have been registered with the Commission to trade securities in the province, and that no prospectus has been filed with respect to the promoted investment. LeBlanc secured a Certificate of Rick Hancox, the Executive Director of the New Brunswick Securities Commission, confirming this state of affairs, which was entered in evidence.⁹

4. ANALYSIS AND DISPOSITION

[18] As indicated, Staff were seeking an order pursuant to paragraphs 184(1) (c) and 184(1) (d) of the *Act*, banning the Respondents from New Brunswick's capital markets. Specifically, Staff requested an order that the Respondents cease trading in all securities, and that any exemptions under New Brunswick securities law not apply to the Respondents. The Commission can issue an order under section 184 if it finds that it is "*in the public interest*" to do so.

[19] Paragraphs 184(1)(c) and (d) of the *Act* state:

"184 (1) The Commission may, if in its opinion it is in the public interest to do so, make one or more of the following orders:

(c) an order that:

(i) trading in or purchasing cease in respect of any securities or exchange contracts specified in the order, or

(ii) a person specified in the order cease trading in or purchasing securities or exchange contracts, specified securities, or exchange contracts or a class of securities or class of exchange contracts;

(d) an order that any exemptions contained in New Brunswick securities law do not apply to a person permanently or for such period as is specified in the order"

⁹ Exhibit #8 to LeBlanc Affidavit

[20] In order to grant the relief requested by Staff, the Commission must initially be satisfied that the evidence demonstrates that the product being promoted is a "security" as defined in the *Act*. The definition of "security" in subsection 1(1) of the *Act* includes, in paragraph (a), "a document, record, instrument or writing commonly known as a security". As stated in *Tycoon*, the Commission finds that an interest, or units in, a joint venture or partnership is commonly understood to be a security. Based on the evidence describing the nature of the investment opportunity promoted, and that the investment was clearly promoted as a security, the Commission finds as a result that the investment solicited by Trevino, on behalf of Ronin Group, meets the definition of a "security".

[21] The Commission must next consider whether or not it is in the public interest to grant the order(s) sought. The issue of what is "in the public interest" has been considered numerous times. As stated by this Commission in the *Intercontinental Trading Group S.A. et al.*¹⁰ decision:

"11. Having established general jurisdiction over the matter, the Commission, in interpreting the provisions of section 184(1), must then determine whether, in its opinion, it is in the public interest to intervene. The legislation does not define the expression "public interest". In *Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*¹¹ the Supreme Court of Canada, with Justice Iacobucci writing for the Court, states at paragraphs 41, 42, and 43 of the decision the following:

"41. However, the public interest jurisdiction of the OSC is not unlimited. Its precise nature and scope should be assessed by considering s. 127 in context. Two aspects of the public interest jurisdiction are of particular importance in this regard. First, it is important to keep in mind that the OSC's public interest jurisdiction is animated in part by both of the purposes of the Act described in s. 1.1, 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". Therefore, in considering an order in the public interest, it is an error to focus only on the fair treatment of investors. The effect of an intervention in the public interest on capital market efficiencies and public confidence in the capital markets should also be considered.

¹⁰ 23 December 2009, at paragraphs 11 and 12

¹¹ 2001 SCC 37

42. *Second, it is important to recognize that s. 127 is a regulatory provision. In this regard, I agree with Laskin J.A. that “[t]he purpose of the Commission’s public interest jurisdiction is neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario’s capital markets” (p. 272). This interpretation of s. 127 powers is consistent with the previous jurisprudence of the OSC in cases such as Canadian Tire, supra, aff’d, (1987), 59 O.R. (2d) 79 (Div. Ct.); leave to appeal to C.A. denied (1987), 35 B.L.R. xx, in which it was held that no breach of the Act is required to trigger s. 127. It is also consistent with the objective of regulatory legislation in general. The focus of regulatory law is on the protection of societal interests, not punishment of an individual’s moral faults: see R. v. Wholesale Travel Group Inc., 1991 CanLII 39 (S.C.C.), [1991] 3 S.C.R. 154, at p. 219.*

43. *Furthermore, the above interpretation is consistent with the scheme of enforcement in the Act. The enforcement techniques in the Act span a broad spectrum from purely regulatory or administrative sanctions to serious criminal penalties. The administrative sanctions are the most frequently used sanctions and are grouped together in s. 127 as “Orders in the public interest”. Such orders are not punitive: Re Albino (1991), 14 O.S.C.B. 365. Rather, the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest), in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets: Re Mithras Management Ltd. (1990) 13 O.S.C.B. 1600. In contradistinction, it is for the courts to punish or remedy past conduct under ss. 122 and 128 of the Act respectively: see D. Johnston and K. Doyle Rockwell, Canadian Securities Regulation (2nd ed. 1998), at pp. 209-11.”*

12. *It is called for, and expected, that the Commission consider the treatment of investors as well as the effect of the impugned activities upon the capital markets and the public’s confidence therein.”*

[22] Staff argues that the evidence supports a conclusion that both section 45 and subsection 71(1) of the *Act* have been violated. Consequently the violations amount to breaches of both, justifying the exercise of the public interest jurisdiction under subsection 184(1) of the *Act*. Staff submits that an order is needed to provide protection to investors against the improper practices pursued by the Respondents, as well as to foster and promote confidence in capital markets.

[23] The requirements set out in section 45 of the *Act* are:

“45 Except where exempted under the regulations, a person shall not

(a) trade in a security or an exchange contract,

(b) act as an adviser,

(c) act as an investment fund manager, or

(d) act as an underwriter,

unless the person is registered, in accordance with the regulations, in the category that the regulations prescribe for the activity.”

[24] The facts of this matter are strikingly similar to those in *Tycoon*. Both matters involve an Investigator receiving a “cold-call” from a party soliciting an investment in an oil and gas opportunity. In *Tycoon*, the Commission discussed the breach of the registration requirement as follows, which the current Panel finds fully applicable to the Ronin Respondents:

“[23] The Respondents – none of whom are registered in New Brunswick – cold-called the Investigator, a New Brunswick resident, actively promoted the Tycoon investment opportunity and solicited the Investigator’s investment in the opportunity. The definition of “trade” in the Act includes “an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of” a trade. The Respondents’ solicitation and promotion activities clearly fall within the definition of “trade”.

[24] Under paragraph 45(a) of the Act, the Respondents are not to trade in a security without being registered unless they are exempted under the regulations. Exemptions to the registration requirement are set out in National Instrument 31-103 Registration Requirements and Exemptions. NI 31-103 provides that, in New Brunswick, a person or company is exempt from the dealer registration requirement if the person or company (a) is not engaged in the business of trading in securities or exchange contracts as a principal or agent, and (b) does not hold himself, herself or itself out as engaging in the business of trading.”

[25] As in *Tycoon*, the Commission is of the opinion that the evidence clearly establishes that the Respondents were in the business of trading securities. The Respondents – none of whom are registered to trade in the province – actively solicited investment from investigator LeBlanc. The Respondents, represented by Trevino, had detailed promotional material, used high-pressure sales tactics, and promised

exceptionally high returns. These actions of the Respondents clearly show their intention to trade in New Brunswick.

[26] The prospectus requirement, set out in section 71 of the *Act*, reads as follows:

"71(1) Unless exempted under this Act or the regulations, no person shall trade in a security on the person's own account or on behalf of any other person where the trade would be a distribution of the security unless

(a) a preliminary prospectus and a prospectus that are in the form prescribed by regulation have been filed with the Executive Director in relation to the security, and

(b) the Executive Director has issued receipts for the preliminary prospectus and prospectus."

[27] LeBlanc specifically advised Trevino that he was not an accredited investor as defined in NI 45-106, but this did nothing to deter Trevino's solicitation. The Certificate of Rick Hancox, the Executive Director of the New Brunswick Securities Commission, is conclusive of the facts that none of the Respondents have ever been registered with the Commission, nor have any prospectus been filed¹². The evidence before the Commission is that the Respondents acted in violation of sections 45 and 71.

[28] In addition to the above violations of the *Act*, the documents provided by the Respondents, and entered as evidence, reveal several other facts which support a conclusion that these Respondents ought to be excluded from New Brunswick's capital markets. These include the indication of fraudulent conduct concerning the well identification number; the admission by Trevino that he purchased the Investigator's telephone number from an operation subject to a cease-trade order issued by this Commission; and the unrealistic and unsubstantiated rates of return set out in the promotional materials.

[29] Having assessed the whole of the evidence, and the possible effect of the Respondents' activities upon the capital markets in the province as well as the public's confidence therein, the Commission finds that it is, and was, in the public interest to

¹² Exhibit #8 to LeBlanc Affidavit

issue the 30 March 2011 order against the Respondents, pursuant to paragraphs 184(1) (c) and (d) of the *Act*.

Dated this 14th day of October 2011.

“original signed by”
Guy G. Couturier, Q.C., Panel Chair

“original signed by”
David G. Barry, Q.C., Panel Member

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