
Citation: *New Brunswick (Financial and Consumer Services Commission) v. MHGG Tech Solutions Ltd. et al.*, 2015
NBFCST 8

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, c s-5.5

Date: 2015-09-25
Docket: SE-001-2015

BETWEEN:

Financial and Consumer Services Commission,

Applicant,

-and-

**MHGG Tech Solutions Ltd. doing business as NRG Binary and
NRG Capital (Cyprus) Limited,**

Respondents.

REASONS FOR DECISION AND ORDER

PANEL: Monica Barley, Panel Chair
John Hanson, Q.C., Panel Member
Donald C. Moors, Panel Member

DATE OF HEARING: June 17, 2015

WRITTEN REASONS: September 25, 2015

APPEARANCES: Mark McElman for the Applicant
The Respondents did not appear

REASONS FOR DECISION AND ORDER

I. OVERVIEW

- [1] On June 17, 2015, the Financial and Consumer Services Tribunal (“Tribunal”) held a hearing pursuant to section 184 of the *Securities Act*, S.N.B. 2004, c S-5.5 (“*Securities Act*”) to consider whether MHGG Tech Solutions Ltd. and NRG Capital (Cyprus) Limited doing business as NRGbinary had breached the *Securities Act* and whether it was in the public interest to order sanctions against the Respondents.
- [2] On February 2, 2015, the Financial and Consumer Services Commission (“Commission”) filed a Statement of Allegations against the Respondents. The Commission alleges in the Statement of Allegations that the Respondents solicited trading in options in New Brunswick without being registered with the Commission, contrary to the registration requirement under paragraph 45(a) of the *Securities Act*. The Commission further alleges in the Statement of Allegations that a representative of MHGG Tech Solutions Ltd. made prohibited representations as to the future value of the options, contrary to subsection 58(3) of the *Securities Act*. This latter allegation was withdrawn by the Commission at the start of the hearing.
- [3] NRG Capital (Cyprus) Limited denies these allegations and states that it has not, does not, and will not solicit or promote services to Canadian clients.
- [4] MHGG Tech Solutions Ltd. has not filed a Response.
- [5] For the reasons set out below, the Tribunal finds the Respondents breached paragraph 45(a) of the *Securities Act* and that sanctions under subsection 184(1) of the *Securities Act* are appropriate.

II. FACTS

A. The Solicitations

- [6] Linda Rickard was the sole witness at the hearing. Ms. Rickard is a case management officer employed in the Enforcement Division of the Commission. This position entails assessing all new enforcement matters and conducting preliminary research.
- [7] Ms. Rickard testified that this matter stems from a previous investigation called Options Area, which was an online binary trading platform. Ms. Rickard testified that in June 2014, as part of the investigation of Options Area, she went to the Options Area website and left a covert email address (amiller2906@gmail.com) and phone number posing as an investor under the alias “Anna Miller”.
- [8] Ms. Rickard was absent from work for a few months in the late summer and fall of 2014. When she came back to work in early November 2014, her covert email account under the alias Anna Miller was full. Amongst these emails were several emails from NRGbinary. Ms. Rickard believes that NRGbinary obtained her covert email address from Options Area as she had never contacted NRGbinary.
- [9] In particular, Ms. Rickard received emails dated June 26, 2014, June 30, 2014, July 17, 2014, and December 15, 2014 from NRGbinary.

- [10] The first June 26, 2014 email from Jessica, a senior account manager with NRGbinary, thanked “Anna Miller” for choosing NRGbinary and invited her to activate her trading account and to deposit. Ms. Rickard testified she had not chosen NRGbinary. The second June 26, 2014 email provided additional information on NRGbinary’s five trading platforms, its special features, and why the recipient should choose NRGbinary. Ms. Rickard testified that the June 26, 2014 emails were the first contact she had with NRGbinary.
- [11] The June 30, 2014 email from NRGbinary Team provided a testimonial from Charles, a recent novice trader, and contained a button stating “TEACH ME HOW TO PROFIT”.
- [12] “Anna Miller” received a fourth e-mail dated July 17, 2014 from Sebastian, a senior account manager with NRGbinary, advising that he was responsible for her NRGbinary account and that he had tried to call her several times but she did not answer her phone. Sebastian requested that she provide a valid number so that he could call her.
- [13] On December 15, 2014, “Anna Miller” received her fifth and sixth e-mails from NRGbinary. These were from Julian, a Junior Account Manager, and were almost identical in content to the June 26, 2014 e-mails.
- [14] Ms. Rickard further testified that in December of 2014, she received a telephone call from Julian from NRGbinary on her covert telephone number, which she had left on the Options Area website back in June 2014. Ms. Rickard testified that she had not left this covert telephone number anywhere but on the Options Area website. Ms. Rickard described this conversation as a high pressure pitch, in which Julian guaranteed high returns on her investment and that she could make 75 to 85 percent of profit. Julian invited “Anna Miller” to provide her credit card number and to open an account on their binary trading website called NRGbinary.com. Ms. Rickard enquired about his registration, whether he was allowed to deal with people in Canada, and where he was regulated. Julian responded that he was registered in Canada and was regulated in London. Ms. Rickard advised that she wanted more time. Julian then told her that instead of the \$1,000 minimum investment she could start with an investment of \$350 and he would put in the extra \$150. Ms. Rickard again told him she needed to do her homework.
- [15] On December 17, 2014, Ms. Rickard received a second call from Julian on her covert line. He again advised her it was a good time to invest. Mr. Rickard advised Julian that she had done her homework and could not find a registration for him in Canada and that she wasn’t comfortable investing. Ms. Rickard testified that during this conversation, Julian denied the need to be registered in Canada and further testified that he dealt with Canada all the time. According to Ms. Rickard, Julian kept pressuring her to invest. Ms. Rickard finally told Julian that she wasn’t interested and to stop calling and e-mailing her and she hung up the phone.
- [16] On January 29, 2015, Ms. Rickard received a phone call on her covert line from Emily with NRGbinary inviting “Anna” to open an account and activate her account. Emily stated that it was easy trading and that she would always make a profit. Ms. Rickard asked Emily if NRGbinary was registered in Canada and Emily kept evading this question and kept repeating that she dealt with clients in Canada all the time. Ms. Rickard finally told Emily that she was not comfortable and hung up.

B. Investigation of NRGbinary

- [17] Ms. Rickard testified that as a result of her phone calls with Julian and the e-mails she received from NRGbinary, she did some research on the internet. She discovered an investor alert from the Ontario Securities Commission dated July 24, 2014 warning the public that NRG Capital CY Limited doing business as www.nrgbinary.com was not registered to engage in the business of trading in securities or advising anyone with respect to investing in, buying or selling securities. The address provided on this investor alert matched the address provided on the NRGbinary website.
- [18] Ms. Rickard also found a warning from the Cyprus Exchange dated October 18, 2013 in relation to NRG Capital (CY) Ltd (www.nrgbinary.com) indicating that it was not permitted to provide investment and ancillary services in the Republic of Cyprus pursuant to Investment Services and Activities and Regulated Markets Law.
- [19] Finally, Ms. Rickard discovered a Scam Alert from the Financial Services Authority of the Seychelles dated October 1, 2014, warning the public about the website www.nrgbinary.com and advising that contrary to what was advertised on this website, the name NRG Seychelles Limited was not registered by the Authority under the International Business Companies Act and strongly advising members of the public to exercise extreme caution when dealing with NRGbinary.
- [20] Ms. Rickard also conducted research on the GoDaddy.com website. This website provides information on the identity of the registrant of a website, the date the website was registered, and addresses for the registrant. Ms. Rickard's research indicated that the registrant organization for the website www.nrgbinary.com is NRG Capital CY Limited and that its address was 9 Karpensiou Street in Nicosia, Cyprus, which matched NRGbinary.com's address on their website.
- [21] Ms. Rickard also obtained screen captures of the NRGbinary website using an internet archive tool called Wayback Machine, which captures content from a website at a specific point in time. Ms. Rickard obtained screen captures of the "About Us" page for July 3, 2014, which indicated that "NRG Capital (CY) Limited (NRGbinary) is an internationally renowned private trading and investment company". NRG Capital (Cyprus) Limited was also listed as the contact on the "Contact Us" page of the NRGbinary website on July 3, 2014.
- [22] Ms. Rickard also obtained a screen capture of the Terms and Conditions page of the NRGbinary website for July 3, 2014 using Wayback Machine. This page indicated that NRGbinary was not registered as an investment adviser or as a broker dealer. This language was not visible on the printed material provided to the Tribunal due to a ribbon, however Ms. Rickard testified at the hearing that she checked the language content below the ribbon the morning of the hearing and it indicated that NRGbinary was not registered as an investment adviser or as a broker dealer. Ms. Rickard testified that this same language regarding NRGbinary's lack of registration also appeared on the website on January 29, 2015.
- [23] Ms. Rickard testified that she went on the NRGbinary.com website again on December 16, 2014. On that date, she took screen shots of various pages of the website. The "Contact Us" page for December 16, 2014 lists the contacts as MHGG Tech Premier Business Centre in London, UK and NRG Capital (Cyprus) Limited. Ms. Rickard testified that this was the first time she noticed the name MHGG Tech on the NRGbinary.com website.

- [24] On January 8, 2015, Ms. Rickard conducted a search of MHGG Tech in the United Kingdom corporate registry. This search revealed that MHGG Tech Solutions Ltd. was incorporated in London in 2014. The address provided for MHGG Tech was the Premier Business Centre, 47-49 Park Royal Road, London, United Kingdom.
- [25] Ms. Rickard testified that she asked the Securities Division of the Commission to do a check on NRG Capital (Cyprus), NRGbinary and MGHH Tech Solutions. Kevin Hoyt, the Executive Director of Securities with the Commission provided her with a Certificate under subsection 196(1) of the *Securities Act* indicating that NRG Capital (Cyprus) Limited and MHGG Tech Solutions Ltd. have never been registered with the New Brunswick Financial and Consumer Services Commission as required by section 45 of the *Securities Act*.

III. ISSUES

- [26] Two issues were before the Tribunal at the hearing:
- (a) Did the Respondents trade in a security or derivative while not registered and not exempted from registration contrary to paragraph 45(a) of the *Securities Act*?
 - (b) What is the appropriate relief under subsection 184(1) of the *Securities Act*?

IV. ANALYSIS

A. PRELIMINARY ISSUE

- [27] The Respondents did not appear at the hearing nor participate in any manner.
- [28] Subsection 14(4) of Local Rule 15-501 *Proceedings before the Tribunal* [Local Rule 15-501] deals with the non-appearance of a party at a hearing and stipulates:
- 14(4) Non-appearance of Party – If a Notice of Hearing has been duly served on a Respondent or any other person required to be served and the Respondent or other person does not attend a hearing, the hearing may proceed in his or her absence and the Respondent is not entitled to any further notice of any step in the Proceeding.
- [29] The Tribunal must thus assess the sufficiency of service of the Notice of Hearing by the Commission upon the Respondents.
- [30] On March 24, 2015, Mark McElman, legal counsel for the Commission in this proceeding, filed an Affidavit of Service detailing how the first Notice of Hearing and Statement of Allegations were served upon the Respondents. This first Notice of Hearing set April 28, 2015 for the hearing of this matter. According to this Affidavit of Service, the Notice of Hearing and Statement of Allegations were served upon the Respondents by Canada Post Expresspost International, by facsimile to the website listed on the NRGbinary website, and by e-mail to four different e-mail addresses.

- [31] Mr. McElman indicates in his March 24, 2015 Affidavit of Service that he received confirmation of delivery for each means of service. Of note, he states that the Notice of Hearing and Statement of Allegations were delivered to the registered offices of NRG Capital (Cyprus) Limited and the registered corporate office of MHGG Tech Solutions Ltd. on March 2, 2015.
- [32] On March 25, 2015, the Commission requested the Tribunal's permission to present its evidence at the April 28, 2015 hearing by way of Affidavit evidence as is permitted by subsection 13(5.1) of Local Rule 15-501 when a Respondent fails to file a Response within 20 days of being served with a Statement of Allegations.
- [33] On March 30, 2015, the Tribunal granted the Commission's request to proceed by way of Affidavit evidence.
- [34] On March 31, 2015, the Registrar of the Tribunal received an e-mail from One Tech Media attaching an e-mail dated February 23, 2015 addressed to celman@fcnb.ca and a letter dated February 19, 2015 addressed to the Tribunal and setting out a Response to the Statement of Allegations.
- [35] Mr. McElman advises he did not receive this e-mail as this is not his e-mail address. In addition, the Registrar advises that she did not receive One Tech Media's February 19, 2015 letter.
- [36] One Tech Media is not a party to these proceedings.
- [37] However, given that the February 19, 2015 letter from One Tech Media appeared to set out a defence to these proceedings, the Tribunal invited the parties to make submissions on extending the deadline for allowing the Respondents to file a Response.
- [38] After considering the Commission's opposition to an extension of time for filing a Response, the Tribunal granted the Respondents an extension to April 29, 2015 for filing a Response. This decision was based on the Tribunal's authority under subsection 2(3) of Local Rule 15-501 to extend any time period prescribed by Local Rule 15-501. The Commission was also advised that if it felt that the matter required immediate relief, it could file the necessary application under Local Rule 15-501.
- [39] NRG Capital (Cyprus) Limited filed a Response on April 26, 2015 denying the allegations in the Statement of Allegations.
- [40] MHGG Tech Solutions Ltd. has not filed a Response.
- [41] Given that NRG Capital (Cyprus) filed a Response, the Tribunal directed that this matter proceed to an oral hearing with viva voce evidence as contemplated by Local Rule 15-501.
- [42] An Amended and Consolidated Notice of Hearing was issued on May 8, 2015, scheduling the hearing for June 17, 2015.
- [43] According to the Second Affidavit of Service of Mark McElman sworn June 16, 2015, on May 11, 2015, he served the second Amended and Consolidated Notice of Hearing, the Statement of Allegations, and a Witness Summary for Linda Rickard upon the Respondents by email, facsimile, Canada Post Xpresspost, and Canada Post lettermail.

- [44] Mr. McElman indicates in his Second Affidavit of Service that he received confirmation of delivery for service by facsimile and Xpresspost. However, service by email was unsuccessful as Mr. McElman received an “undeliverable” report.
- [45] Subsection 5(1) of Local Rule 15-501 stipulates the manner in which a Statement of Allegations may be served on the Respondents. Paragraph 5(1)(e) specifies that documents may be served by prepaid courier to the last known address for the party, while paragraph 5(1)(f) permits service of documents by electronic transmission, which term is defined in subsection 1(1) and means transmission by fax or e-mail.
- [46] The Tribunal is satisfied that the Respondents were properly served with the first Notice of Hearing, the Statement of Allegations, and more importantly the Amended and Consolidated Notice of Hearing setting June 17, 2015 for the hearing of this matter.
- [47] Consequently, pursuant to subsection 14(4) of Local Rule 15-501, the Tribunal was authorized to proceed with the hearing in this matter despite the Respondents’ non-appearance.

B. BREACH OF PARAGRAPH 45(a) OF THE SECURITIES ACT

- [48] The Commission submits that the Respondents traded in options without being registered and not exempted from registration under New Brunswick securities law, contrary to paragraph 45(a) of the *Securities Act*.
- [49] Paragraph 45(a) of the *Securities Act* reads as follows:

45 Unless the person is exempted under the regulations, if a person is not registered in accordance with the regulations in the category that the regulations prescribe for the activity, the person shall not

(a) trade in a security or derivative [...]

- [50] The term “derivative” employed in paragraph 45(a) is defined in subsection 1(1) of the *Securities Act*:

“derivative” means

(a) an option, swap, futures contract, forward contract or other financial or commodity contract or instrument whose market price, value, or delivery, payment or settlement obligations are derived from, referenced to or based on an underlying interest, including a value, price, index, event, probability or thing[...]

- [51] The term “trade” found in paragraph 45(a) is also defined in subsection 1(1) and includes:

[...]

(b) entering into a derivative or making a material amendment to, terminating, assigning, buying, selling or otherwise acquiring or disposing of a derivative,

[...]

(e) participation as a trader in a transaction in a derivative made on or through the facilities of a derivatives trading facility,

[...]

(h) an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (g).

- [52] There are three elements that must be proven by the Commission in order to establish a breach of paragraph 45(a) of the *Securities Act*: (1) that the options constitute a security or derivative; (2) that the actions of the Respondents constitute a trade in a security or derivative; and (3) that the Respondents were required to be registered with the Securities Division of the Commission.
- [53] First, the Tribunal finds the options constitute a derivative as defined in subsection 1(1) of the *Securities Act*. The definition of “derivative” set out in that subsection expressly includes an “option”. In addition, the emails sent by NRGbinary to “Anna Miller” and the NRGbinary website clearly reference “binary options”.
- [54] Second, the Tribunal finds that the actions of NRGbinary constitute a trade in a derivative as NRGbinary solicited a trade in options as defined under subsection 1(1)(h) of the *Securities Act*. This finding is based on the following facts:
- On June 26, 2014, Jessica, a senior account manager with NRGbinary, sent “Anna Miller” an e-mail inviting her to activate her account and deposit. Ms. Rickard testified that she never chose NRGbinary and that this e-mail was the first contact she had with NRGbinary.
 - On June 30, 2014, NRGbinary Team sent another e-mail to “Anna Miller”. This email provided a testimonial from Charles, a novice trader, and invited her to click the button and an account manager would contact her to guide her step-by step through starting her trading experience.
 - On July 17, 2014, “Anna Miller” received an e-mail from Sebastian, a senior account manager with NRGbinary, indicating that he was responsible for her account and had tried to call her several times without success. Sebastian requested that “Ms. Miller” provide him a valid telephone number.
 - On December 15, 2014, Julian, a junior account manager with NRGbinary, sent “Anna Miller” an email inviting her to activate her account and deposit.
 - Also on December 15, 2014, “Ms. Miller” received a telephone call from Julian. Ms. Rickard testified that this telephone call came in on her covert telephone line and that she had not left this telephone number anywhere but on the Options Area website in June 2014. Ms. Rickard described this conversation as a high pressure sales pitch during which Julian indicated that binary options were the best investment and that she could make 75 to 85

percent profit. Julian noted that her account was dormant and he wanted to help her activate her account and make money. He invited “Anna Miller” to provide her credit card number and to open an account on their binary trading website called NRGbinary.com.

- On December 17, 2014, Ms. Rickard received another telephone call from Julian on her covert line. He again advised her it was a good time to invest. Mr. Rickard advised Julian that she had done her homework and could not find a registration for NRGbinary in Canada and that she wasn’t comfortable investing. Ms. Rickard testified that during this conversation, Julian denied the need to be registered in Canada and further testified that he dealt with Canada all the time. According to Ms. Rickard, Julian kept pressuring her to invest. Ms. Rickard finally told Julian that she wasn’t interested and to stop calling and emailing her and she hung up the phone.
- On January 29, 2015, Ms. Rickard received a phone call on her covert line from Emily with NRGbinary inviting “Anna” to activate her account. Emily explained to Ms. Rickard that it was easy trading and that she would always make a profit. Ms. Rickard asked Emily if NRG was registered and Emily kept evading this question and kept repeating that she dealt with clients in Canada all the time. Ms. Rickard finally told Emily that she was not comfortable and hung up.

[55] The fact that there was no sale to “Anna Miller” does not mean that there was no trade. NRGbinary repeatedly contacted “Anna Miller” to open an options trading account. NRGbinary solicited “Anna Miller” to buy options or participate as a trader and constitute a trade as defined in subsection 1(1) of the *Securities Act*.

[56] As for the Respondents, NRG Capital (CY) Limited and MHGG Tech Solutions Ltd., the Respondent NRG Capital (Cyprus) Limited states in its Response that it has no connection to the NRGbinary website. It admits to providing credit card processing to this website a few years ago, but denies doing so in the period set out in the Statement of Allegations. NRG Capital (Cyprus) Limited states in its Response that it has not, does not and will not solicit or promote services to Canadian clients.

[57] However, Ms. Rickard provided evidence that establishes the link between the Respondents and the NRGbinary website. The Tribunal accepts this evidence as it comes directly from the NRGbinary website. Screen captures of the “About Us” page of the NRGbinary website dated July 3, 2014 indicate that “NRG Capital (CY) Limited (NRGbinary) is an internationally renowned private trading and investment company”. The July 3, 2014 screen capture of the “Contact Us” page equally lists NRG Capital (CY) Limited as the contact. The December 16, 2014 screen capture of the “Contact Us” page lists both NRG Capital (Cyprus) Limited and MHGG Tech Premier Business Centre as the contacts. As previously mentioned, MHGG Tech Premier Business Centre is the registered office for MHGG Tech Solutions Ltd.

[58] Third, with respect to registration, the Tribunal reiterates that the registration requirement constitutes one of the cornerstones of the regulatory framework established by the *Securities Act*. Given the Tribunal’s findings that the options constitute a derivative and that the actions of the Respondents constitute a trade in a derivative, it was incumbent upon the Respondents to register with the Securities Division of the Commission unless they benefited from an exemption.

[59] The January 29, 2015 Certificate of Kevin Hoyt, the Executive Director of Securities for New Brunswick, is conclusive evidence that NRG Capital (Cyprus) Limited doing business as NRGbinary and MHGG Tech Solutions Ltd. were not registered with the Commission to trade in options between June 26, 2014 and January 29, 2015 as required by section 45 of the *Securities Act*.

[60] Paragraph 196(1)(a) of the *Securities Act* states as follows regarding the admissibility of the Certificate of the Executive Director:

196(1) A certificate containing any of the following statements and purporting to be signed by the Chair of the Commission, another member of the Commission or by the Executive Director is, without proof of the appointment, authority or signature of the person who has signed the certificate, admissible in evidence and is, in the absence of evidence to the contrary, proof of the facts stated in the certificate:

(a) a statement about the registration or non-registration of any person under this Act or the regulations [...]

[61] In addition, the NRGbinary website contained an admission on the “About Us” page on July 3, 2014 and on January 29, 2015 that NRGbinary was not registered as an investment adviser or as a broker dealer.

[62] With respect to an exemption from registration, the onus of proof to establish the existence of a valid exemption falls upon the Respondents. [*MI Capital, Re, 2012 NBSECE 8, paragraph 30*]. The Respondent NRG Capital (Cyprus) Limited does not set out an exemption to the registration requirement in its Response. As for the Respondent MHGG Tech Solutions Ltd., it did not file a Response. Finally, neither Respondent appeared at the hearing nor submitted evidence to the Tribunal.

[63] The Tribunal finds the Respondents have not discharged their onus of establishing the existence of an exemption to the registration requirement.

[64] The Tribunal concludes that the Respondents breached paragraph 45(a) of the *Securities Act* by trading in options between June 26, 2014 and January 29, 2015 while not registered and not benefiting from an exemption from registration.

C. SHOULD AN ORDER BE ISSUED?

[65] In its Statement of Allegations filed February 2, 2015, the Commission seeks orders from the Tribunal under clause 184(1)(c)(ii)(A) and paragraph 184(1)(d) of the *Securities Act*. These provisions read as follows:

Orders in the public interest

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

[...]

(c) an order that

(ii) a person specified in the order

[...]

(A) cease trading in or purchasing securities or derivatives,
specified securities or derivatives

[...]

(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;

[66] The Tribunal must determine if the relief sought by the Commission is in the public interest. The expression “in the public interest” can be traced to the dual purposes of the *Securities Act* stated as follows:

2 The purposes of this Act are

(a) to provide protection to investors from unfair, improper or fraudulent practices, and

(b) to foster fair and efficient capital and derivatives markets and confidence in capital and derivative markets.

[67] In *Equal Treatment of Asbestos Minority Shareholder v. Ontario (Securities Commission)*, 2001 SCC 37, the Supreme Court of Canada discussed the binary purpose of securities legislation as follows:

41. 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.

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] 3 S.C.R. 154, at p. 219.

[68] The Commission submits that the evidence is consistent with the characterization that both Respondents are boiler rooms, which pose a grave risk of harm to the investing public in New

Brunswick and elsewhere. The Tribunal agrees. The solicitations of “Anna Miller” by NRGbinary were persistent and aggressive.

[69] Based on the whole of the evidence, the Tribunal is satisfied that it is appropriate to exercise its public interest jurisdiction pursuant to subsection 184(1) of the *Securities Act*. The Tribunal is of the view that permanent sanctions are appropriate given the Respondents’ total disregard for the registration requirements under New Brunswick securities law.

V. DECISION AND ORDER

[70] For the reasons set out above, the Tribunal concludes that the Respondents have breached New Brunswick securities law. The Tribunal concludes it is in the public interest to make an Order against the Respondents under subsection 184(1) of the *Securities Act* as follows:

- (a) pursuant to clause 184(1)(c)(ii)(A) of the *Securities Act*, that the Respondents cease trading in securities or derivatives in New Brunswick permanently; and
- (b) pursuant to paragraph 184(1)(d) of the *Securities Act*, that any exemptions under New Brunswick securities law do not apply to the Respondents permanently.

Dated this 25th day of September, 2015.

ORIGINAL SIGNED BY
Christine M. Bernard

Monica L. Barley, Panel Chair

ORIGINAL SIGNED BY
Christine M. Bernard

John M. Hanson, Q.C., Panel Member

ORIGINAL SIGNED BY
Christine M. Bernard

Donald C. Moors, Panel Member