

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

AND

IN THE MATTER OF

**GOLDPOINT RESOURCES CORPORATION, LINO NOVIELLI,
BRIAN MOLONEY, and ZAIDA PIMENTEL**

(Respondents)

**DECISION AND ORDER
PURUSANT TO SUBSECTION 184(1.1)**

BACKGROUND

1. On 3 June 2013, Staff (“Staff”) of the New Brunswick Financial and Consumer Services Commission (“Commission”)¹ filed with the office of the Secretary of the Commission an application for an order (“Application”) pursuant to paragraph 184(1.1)(c)² of the *Securities Act* (“Act”) against the Respondents Goldpoint Resources Corporation (“Goldpoint”), Lino Novielli (“Novielli”), Brian Moloney (“Moloney”), and Zaida Pimentel (“Pimentel”).

2. Staff requested the following relief against the Respondents, pursuant to paragraphs 184(1)(c), (d), (g), (h) and (i) of the *Act*:

- (a) the Respondents Goldpoint, Novielli, Moloney and Pimentel cease trading in or purchasing any securities (including, without limitation, the solicitation of trades in securities or any acts constituting attempts or acts in furtherance of trading in securities) permanently;
- (b) any exemptions in New Brunswick securities law do not apply to the Respondents Goldpoint, Novielli, Moloney and Pimentel permanently;
- (c) the Respondents Goldpoint, Novielli, Moloney and Pimentel are reprimanded;

1 As of 1 July 2013 the New Brunswick Securities Commission is continued as the Financial and Consumer Services Commission, and the adjudicative functions of the Securities Commission are to be performed by the Financial and Consumer Services Tribunal. In accordance with section 75 of the *Financial and Consumer Services Commission Act*, 2013, c.30, this decision of the Commission is deemed to be a decision of the Financial and Consumer Services Tribunal.

2 In accordance with subsection 75(2) of the *Financial and Consumer Services Commission Act*, this Decision and Order reflects the provisions of the *Securities Act* as they existed before 1 July 2013. All references to the *Securities Act* in this Decision and Order reflect the provisions as they existed before 1 July 2013.

(d) the Respondents Novielli, Moloney and Pimentel resign any positions they hold as a director or officer of any issuer;

(e) the Respondents Novielli, Moloney and Pimentel are prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager permanently;

or for such period as is specified by the Commission.

3. Pursuant to subsection 184(1.1) of the *Act* the Commission may, after providing the Respondents an opportunity to be heard, issue an order under paragraphs 184(1)(c), (d), (g), (h) and (i) against a person if the person is subject to an order made by a securities regulatory authority or self-regulatory organization in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person.

LAW & EVIDENCE

4. The relevant provisions of the *Act* are as follows:

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;

...

(g) an order that a person be reprimanded;

(h) an order that a person resign one or more positions that the person holds as a director or officer of an issuer, registrant or mutual fund manager;

(i) an order that a person is prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager;

...

184(1.1) In addition to the power to make orders under subsection (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 or self-regulatory organization in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person, ...

5. On 3 June 2013, Staff filed with the Secretary the affidavit of Gordon Fortner, an investigator with the Commission ("Fortner Affidavit"), in support of Staff's Application. The Fortner Affidavit outlines the background on the Commission's investigation into the activities of Goldpoint, Novielli and Moloney, and details the Ontario Securities Commission's ("OSC") enforcement proceedings against the Respondents.

6. The Fortner Affidavit contains the following exhibits:

- (a) Exhibit A – 12 May 2008 *ex parte* Temporary Order issued by the Commission against Goldpoint, Novielli, Moloney and five other respondents;
- (b) Exhibit B – 15 May 2008 Notice of Hearing issued by the Commission for a Hearing into the activities of Goldpoint, Novielli, Moloney and five other respondents to be held on 26 May 2008;
- (c) Exhibits C and D – 26 May 2008 and 19 June 2008 Orders extending the Commission's 12 May 2008 Temporary Order;
- (d) Exhibits E and F – Notice of Hearing and Amended Notice of Hearing issued by the Commission in April 2009 scheduling a further hearing in this matter to 30 April 2009;
- (e) Exhibit G – Extension Order issued by the Commission on 30 April 2009 discontinuing the Commission proceedings against five respondents pending the outcome of OSC proceedings and continuing the Commission's 12 May 2008 Temporary Order against Goldpoint, Novielli and Moloney pending further order of the Commission; and
- (f) Exhibit H – Final order issued by the OSC against the Respondents on 1 February 2013 ("OSC Order"), wherein which the OSC ordered, amongst other relief, the relief requested by Staff in their Application, as set out in paragraph 2, above.

7. None of the Respondents appeared at any of the hearings into this matter held by the Commission.

8. At the 30 April 2009 hearing, the Panel heard submissions from Staff on Staff's completed investigation and on the proceedings against the Respondents that had been commenced by the OSC. The Panel issued the 30 April 2009 extension order against Goldpoint, Novielli and Moloney, and Staff advised that they would await the outcome of the OSC proceedings into the Respondents' activities and would be seeking a final order under subsection 184(1.1) at that time.

9. In their 3 June 2013 Application, Staff added the respondent Pimentel to their proceedings, along with Goldpoint, Novielli and Moloney. Pimentel has not been subject to any previous orders of the Commission.

10. On 10 July 2013, Staff filed an Affidavit of Service confirming that the Respondents had been served with the Application, Notice of Application and the Fortner Affidavit. The Affidavit of Service details service attempts by email, regular mail and via personal service. The Panel is

satisfied that the respondents Goldpoint, Novielli and Pimentel were personally served with the Application, Notice of Application and Fortner Affidavit on 24 June 2013. The Affidavit of Service indicates that attempts to personally serve Moloney were unsuccessful but the Panel is satisfied that Moloney received proper notice of the proceedings through service via email on 21 June 2013 and via regular mail sent 21 June 2013. The Affidavit of Service details Staff's receipt from the OSC of the most recent email and regular mail addresses for Moloney.

11. The Notice of Application provided the Respondents with the deadline of 11 July 2013 to notify the Commission if they wished to exercise their right to be heard. Despite receiving proper service, none of the Respondents contacted the Commission to request an opportunity to be heard with respect to the Application. The Notice of Application advised that if no request to be heard was received by 11 July 2013, an Order may be issued without further notice to the Respondents.

ANALYSIS

12. The Panel reviewed the Application and Notice of Application, and the Fortner Affidavit and Affidavit of Service filed by Staff.

13. With respect to the requirements for an order to be issued under subsection 184(1.1), the Panel is satisfied that the Respondents were provided with an opportunity to be heard, as detailed in the Notice of Application and the Affidavit of Service; and the Panel is satisfied that the respondents are subject to the OSC Order, which is an order made by a securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements on the Respondents.

14. The OSC, in the OSC Order, noted that the "Respondents carried out a fraudulent investment scheme, and that the Respondents have not complied with Ontario securities law and have acted contrary to the public interest".

15. Along with meeting the requirements for an order under subsection 184(1.1), the respondents Goldpoint, Novielli and Moloney were also subject to administrative proceedings before the Commission in 2008 and 2009, which resulted in the respondents Goldpoint, Novielli and Moloney being ordered by the Commission to cease trading in any securities on a temporary basis due to evidence of these respondents attempting to illegally distribute securities in New Brunswick.

16. Due to the Respondents' activities in New Brunswick and the findings of the OSC, the Panel finds it in the public interest to grant the order requested by Staff under section 184(1.1), reciprocating the OSC Order.

17. Further, the Panel reviewed the Fortner Affidavit, including the OSC Order, and is satisfied that there is a real and substantial connection between the Respondents and the originating jurisdiction, Ontario, as required by the Commission in the *Shire International Real Estate Investment Ltd. et al.* decision, issued on 14 May 2010.

ORDER

18. Based on the evidence presented by Staff, the Panel accepts Staff's submission that it is in the public interest to issue the following order, pursuant to subsection 184(1.1) of the *Act*, consistent with the intent of the OSC Order upon which the Application was based:

- (a) pursuant to subparagraph 184(1)(c)(ii) of the *Act*, the Respondents Goldpoint, Novielli, Moloney and Pimentel cease trading in or purchasing any securities (including, without limitation, the solicitation of trades in securities or any acts constituting attempts or acts in furtherance of trading in securities) permanently;
- (b) pursuant to paragraph 184(1)(d) of the *Act*, exemptions in New Brunswick securities law do not apply to the Respondents Goldpoint, Novielli, Moloney and Pimentel permanently;
- (c) pursuant to paragraph 184(1)(g) of the *Act*, the Respondents Goldpoint, Novielli, Moloney and Pimentel are reprimanded;
- (d) pursuant to paragraph 184(1)(h), the Respondents Novielli, Moloney and Pimentel resign any positions they hold as a director or officer of any issuer; and
- (e) pursuant to paragraph 184(1)(i), the Respondents Novielli, Moloney and Pimentel are prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager permanently.

DATED at the City of Saint John, New Brunswick, this 2 day of August 2013.

"original signed by"

Anne La Forest, Panel Chair

"original signed by"

Céline Robichaud-Trifts, Panel Member

"original signed by"

Kenneth Savage, Panel Member

Financial and Consumer Services Tribunal
Suite 300, 85 Charlotte Street
Saint John, New Brunswick E2L 2J2

Tel: 506-658-3060

Fax: 506-658-3059

registrar@fcbtribunal.ca