

IN THE MATTER OF
The *Securities Act*
S.N.B. 2004, c. S-5.5, as amended

- and -

IN THE MATTER OF
**LIMELIGHT CAPITAL MANAGEMENT LTD., LIMELIGHT ENTERTAINMENT
INC., AL GROSSMAN, CARLOS DA SILVA AND DAVID CAMPBELL**

DECISION, REASONS FOR THE DECISION AND ORDER

Dates of Hearing: 11 April 2006, 26 April 2006, 14 June 2006, 12 December 2006,
26 June 2007

Date of decision: 17 August 2007

Panel:

David T. Hashey, Q.C., Panel Chair

Hugh J. Flemming, Q.C., Panel Member

Donne W. Smith, Panel Member

Counsel:

Jake Van der Laan,

Mark McElman and Neil Sandler

For the staff of the New Brunswick
Securities Commission

Ari Kulidjian

For Al Grossman

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IN THE MATTER OF
**LIMELIGHT CAPITAL MANAGEMENT LTD., LIMELIGHT ENTERTAINMENT
INC., AL GROSSMAN, CARLOS DA SILVA AND DAVID CAMPBELL**

REASONS FOR THE DECISION

1. BACKGROUND

a. Overview of Proceedings

[1] This matter involves allegations of illegal distributions of securities to New Brunswick investors ("NB investors") in contravention of sections 45 and 71 of the New Brunswick *Securities Act* ("Act") and allegations of prohibited representations to New Brunswickers contrary to section 58 of the *Act*, activities contrary to the public interest.

[2] Permanent cease trade orders were issued by the New Brunswick Securities Commission (the "Commission") against Limelight Capital Management Ltd. ("LCML"), Limelight Entertainment Inc. ("Limelight") and Al Grossman ("Grossman") on 26 April 2006, and against Carlos Da Silva ("Da Silva") and David Campbell ("Campbell") on 14 June 2006.

[3] The hearing concluded on 26 June 2007, at which time Staff of the Commission ("Staff") sought orders for administrative penalties and costs against Limelight, Da Silva and Campbell. Staff alleged the following, as set out in paragraph 21 of Staff's Consolidated Amended Statement of Allegations filed 4 May 2007 with the Commission:

21. Staff allege that the respondents [Limelight, Da Silva and Campbell] have contravened New Brunswick securities law and acted contrary to the public interest by:
 1. either directly or through their agents or representatives, including

the sales persons, having effected, authorized, permitted, endorsed or acquiesced to the trading in shares of Limelight, without the salesperson or themselves having been registered with the Commission in any capacity, contrary to s. 45 of the *Securities Act*, c. S-5.5, SNB 2004;

2. either directly or through their agents or representatives, including the sales persons, having effected, directed, authorized, permitted, endorsed or acquiesced to the making of misleading and prohibited representations to investors, including representations regarding the future listing and future value of Limelight shares and that Limelight would be listed on a stock exchange, with the intention of effecting sales of Limelight shares, contrary to s. 58 of the *Securities Act*;
3. effecting a distribution of a security without having obtained a receipt for a prospectus, as required by section 71 of the *Securities Act*; and
4. failing to comply with the cease trade order issued by the Commission on 11 April 2006.

b. Issuing of Cease Trade Orders

i. Temporary and Permanent Cease Trade Orders against Grossman, LCML and Limelight

[4] An *ex parte* hearing in this matter was held on 11 April 2006, at which time the Panel issued a Temporary Cease Trade Order ("TCTO") against Grossman, LCML, Limelight and two other parties, Hanoch Ulfman ("Ulfman") and Tom Mesinski ("Mesinski"). The TCTO was based on evidence of illegal trading presented by Counsel for Staff. The TCTO provided that all trading in the securities of Limelight and/or LCML by its officers, directors, employees and/or agents cease.

[5] Staff served the TCTO on Da Silva and Campbell in their capacity as directors of Limelight, on 20 April 2006. Staff was unable to serve Ulfman or Mesinski, and later discontinued their action against these two parties.

[6] At a hearing before the Panel held on 26 April 2006, Staff requested that the TCTO be made permanent as against Grossman, Limelight and LCML. Neither Grossman, Limelight nor LCML appeared at the hearing, and none of these parties were represented by counsel, despite being served.

[7] Through two affidavits sworn by Commission investigator Ed Leblanc (the “Investigator”), Staff presented evidence that Limelight had been soliciting NB investors and effecting trades of Limelight shares with NB investors; that Limelight through its representatives had been making prohibited representations to NB investors contrary to section 58 of the *Act*; that neither Limelight nor any of its representatives were at any material time registered with the Commission as required by section 45 of the *Act*; and that Limelight had not sought a receipt for a prospectus prior to engaging in a distribution of shares to NB investors, as required by section 71 of the *Act*. This evidence was not contested.

[8] Staff also presented evidence through affidavits of the Investigator that Grossman and LCML were not registered with the Commission; that LCML traded without complying with the securities law of Ontario, under the direction of Grossman; and that Grossman was the subject of cease trade orders in at least three other Canadian jurisdictions and appeared to be a directing mind behind several illegal stock trading enterprises. This evidence was also not contested.

[9] After reviewing the evidence presented by Staff and being of the opinion that the conduct of Limelight, LCML and Grossman posed a detriment to New Brunswick’s investors and capital markets, the Panel held that it was in the public interest to make the cease trade order permanent as against them. Grossman’s past conduct was sufficient for the Panel to issue the permanent cease trade order as against him, and against LCML as the Panel determined it was under the direction of Grossman.

[10] The hearing on 26 April 2006 was adjourned to allow Staff to make representations on the matter of administrative penalties and costs; to consider the addition of other parties to the proceedings; and to complete their investigation. Staff specifically requested time to assess the impact of the parties’ conduct on NB investors.

ii. Permanent Cease Trade Orders against Da Silva and Campbell

[11] At the continuation of the hearing on 14 June 2006, Da Silva and Campbell were added as parties, and the Panel considered issuing permanent cease trade orders against them.

[12] Da Silva and Campbell were served on 6 June 2006 with notice of the 14 June 2006 continuation of the hearing, in the form of a Supplementary Notice of Hearing and Supplementary Statement of Allegations, which were both filed with the Commission on 2 June 2006. These documents clearly set out the relief sought against Da Silva and Campbell, including the cease trade order, administrative penalties and costs.

[13] Neither Da Silva nor Campbell attended the hearing, and they were not represented by counsel. Counsel for Staff advised the Commission that Da Silva had personally contacted him just prior to the hearing to advise that he was not going to be attending and that he consented to the cease trade order sought against him. Staff had not heard from Campbell, though he had also been served.

[14] Staff presented evidence to the Panel in the form of a third supplementary affidavit of the Investigator, which confirmed the connection of Da Silva and Campbell to Limelight and their direct involvement in illegal distributions in New Brunswick contrary to sections 45 and 71 of the *Act*. The investigator presented evidence he had received from NB Investors and from the Ontario Securities Commission ("OSC") indicating that Da Silva and Campbell were the directing minds of Limelight and that they had been soliciting NB Investors.

[15] Staff also presented evidence that Da Silva and Campbell, along with Limelight, were the subject of cease trade orders in Ontario and Alberta. The evidence was not contested.

[16] After reviewing the evidence and being of the opinion that the conduct of Da Silva and Campbell posed a detriment to New Brunswick's investors and capital markets, the Panel held that it was in the public interest to issue the permanent cease trade order as against them.

[17] Staff did not seek an administrative penalty or costs against LCML or Grossman, as Staff determined during the course of the investigation that LCML never issued shares to any NB investors. At the 14 June 2006 hearing, Staff requested an adjournment to continue their investigation of Limelight, Da Silva

and Campbell. The Panel granted an adjournment to allow for further investigation.

c. Hearing on Administrative Penalty and Costs

i. Respondents Not Appearing

[18] The hearing was adjourned on several occasions because of delays in Staff receiving financial and corporate records. These records were requested pursuant to an Investigation Order issued by the Commission from Limelight and its representatives, and from TD Bank, which held Limelight's corporate bank account (the "TD Bank account").

[19] During part of the adjournment period Limelight, Da Silva and Campbell (together the "Respondents") were represented by counsel, Mr. Peter Tuovi. Mr. Tuovi consented to two adjournments on behalf of the Respondents, by consent orders dated 6 October 2006 and 12 December 2006.

[20] A conference call about the adjournment occurred between the Panel, Staff, Mr. Tuovi and counsel for Mr. Grossman on 12 December 2006. At this time Staff advised that they had just received the majority of the requested financial information and required time to review same. The parties agreed to the date of 24 April 2007 for the continuation of the hearing.

[21] Because of the continuation of another hearing, the Panel adjourned this matter from 24 April 2007 to proposed date of 26 June 2007. On behalf of the Panel, the Secretary of the Commission sent letters to counsel for the parties advising of the adjournment and the proposed dates, and requesting notification if the proposed date of 26 June 2007 was acceptable. No response was received; on 4 May 2007 confirming letters were served on counsel for the parties advising that the hearing would proceed on 26 June 2007.

[22] Subsequent to this final adjournment, Mr. Peter Tuovi requested and was granted leave by the Panel to be removed as solicitor of record for the Respondents. Notice of Mr. Tuovi's removal as solicitor of record was served on the Respondents and Mr. Grossman on 9 June 2007, along with a reminder of the hearing date and timeline for submissions.

[23] Though represented by counsel in this proceeding for several months, the Respondents filed no pleadings or submissions in this matter. They did not

respond to Staff's evidence or allegations. The Respondents did not appear at any stage during the hearing, with the exception of the 12 December 2006 conference call when they were represented by Mr. Tuovi.

[24] Despite being served with all of Staff's material and receiving notice of the 26 June 2007 continuation of the hearing on administrative penalties and costs, the Respondents failed to attend.

[25] Section 10 of New Brunswick Regulation 2004-66 under the *Securities Act* provides that:

10 In addition to any other person to whom notice is required to be given under the regulations under the Act, notice in writing of the time, place and purpose of a hearing shall be given to every party to the hearing.

Notice was served on several occasions to the Respondents, both to their counsel and, after his removal from the record, to each of them by personal service under section 199 of the *Act*.

[26] No further relief was sought against Grossman and LCML beyond the permanent cease trade order issued on 26 April 2006. As such, neither Grossman nor LCML attended or were represented by counsel at the 26 June 2007 hearing.

ii. Evidence Presented by Staff

[27] Staff presented the Panel with documentary and direct *viva voce* evidence. On 26 June 2007, the Panel heard the testimony of the Investigator, a Commission staff member who assisted with the review of Limelight's financial documentation and three NB investors. The documentary evidence presented at the hearing included several affidavits, information received from the OSC, and the financial and corporate records of Limelight.

[28] The Panel's decision and resulting order on administrative penalty and costs as against the Respondents, along with reasons and the material facts supporting the decision, follow.

2. FACTS

a. The Respondents

i. Limelight Entertainment Inc.

[29] Limelight is an Ontario corporation incorporated on 14 August 2000 and dissolved 29 November 2004. Limelight was revived on 27 September 2005, and

at all material times to this proceeding had its head office at 300 Richmond Street West, Toronto, Ontario.

[30] Limelight was promoted as operating in the entertainment industry, involved in the production of music, books, television and live entertainment shows.

[31] Limelight is not and has never been registered with the Commission in any capacity, nor has it made any filings with the Commission. In particular, Limelight has not filed any prospectus or Reports of Exempt Distributions with respect to distributions of its shares to New Brunswick residents.

[32] Specifically regarding exemptions, there is no evidence that Limelight or its representatives made any attempt to ascertain if any NB investors met the definition of an "accredited investor", as set out in National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106"). Issuers are legally entitled to sell to accredited investors without having filed a prospectus; accredited investors include individuals who have a net worth in excess of \$1 million, or whose net income exceeds \$200,000.

ii. Carlos Da Silva

[33] Da Silva resides in Toronto, Ontario and was the President and a director of Limelight from 5 April 2004 until at least 17 April 2006, when he sent notice to Campbell (which notice was also received by TD Bank) of his resignation as director and president.

[34] Da Silva was identified as being Limelight's President and CEO on Limelight's Executive Summary dated February 2006, which was available on Limelight's website and provided to several NB investors. Da Silva is also listed as a director on Limelight's Ontario Corporation Profile Report.

[35] Da Silva was directly involved in the financial and banking activities of Limelight, as evidenced by the banking records provided by TD Bank. Da Silva and Campbell, as they both served as Limelight's President, were the only individuals authorized by TD Bank to withdraw from the TD Bank account.

[36] Da Silva is not and has never been registered with the Commission in any capacity.

[37] Da Silva previously worked in the securities industry, having been a registered representative in Ontario with C.J. Elbourne Securities and Marchment and MacKay. Da Silva was also identified by the Alberta Securities Commission ("ASC") in their decision in the Euston Capital matter (*Re Euston Capital Corp.*, 2007 ABASC 338) as being the head of sales at Euston Capital, a company cease traded and fined by the ASC for illegal distributions of securities. However, Da Silva was not a respondent in that ASC proceeding. Da Silva's biography set out in Limelight's Executive Summary identifies his lengthy experience in capital raising initiatives.

iii. David Campbell

[38] Campbell resides in Mississauga, Ontario and was an officer and director of Limelight since 5 April 2004. Corporate and banking documentation presented by Staff showed Campbell became President of Limelight after the resignation of Da Silva in April 2006.

[39] Campbell was identified as being Limelight's Secretary, Treasurer and Director on Limelight's Executive Summary dated February 2006, which was available on Limelight's website in April of 2006. Campbell is also listed as a director on Limelight's Ontario Corporation Profile Report.

[40] Campbell was directly involved in the financial and banking activities of Limelight, as evidenced by the banking records provided by TD Bank. Da Silva and Campbell, as they both served as Limelight's President, were the only individuals authorized by TD Bank to withdraw from the TD Bank account.

[41] Campbell is not and has never been registered with the Commission in any capacity.

[42] Evidence was presented that Campbell also worked at Euston Capital, along with Da Silva. Campbell's biography, as set out in Limelight's Executive Summary, sets out his experience in capital raising initiatives.

b. The Investors

i. M.M.

[43] M.M. testified before the panel on 26 June 2007. M.M. lives in southern New Brunswick, and was a resident of New Brunswick at the time relevant to this proceeding. M.M. is a small business owner and a franchisee.

[44] In early 2006, M.M. was cold-called by a representative of Limelight named Eric O'Brien ("O'Brien"). O'Brien related the business of Limelight as being entertainment based, identifying some of their ventures as a fishing show on T.V., and a CD deal with Shania Twain. M.M. was told that the shares were going to "go public" in 45 to 90 days. O'Brien did not promise an increase in the share value, but told M.M. that from past experience, in the businesses they had been in "they had received in around \$5 on shares that started at \$2".

[45] M.M. requested more information on Limelight and on 1 March 2006 was provided with a fax containing an executive summary of Limelight and other company details. He reviewed this information over a period of time, after which he was contacted by O'Brien again and was told a Purolator courier would be sent to pick up his cheque. The courier arrived, but M.M. did not send a cheque. M.M. testified that by this time he had been contacted by O'Brien at least three times.

[46] M.M. testified that after he declined to send the cheque, he told O'Brien that he had reservations about the investments. It was at this time that M.M. was contacted by Da Silva. M.M. testified that Da Silva relayed the same information about Limelight that had been presented by O'Brien, but pushed the fact that the company had a deal with Shania Twain. M.M. also testified that Da Silva told him the shares would be going public within 45 to 90 days, and at that time they expected the shares "would be in the \$5 range that it would open up at, and maybe go higher than that".

[47] M.M. estimates that his conversation with Da Silva occurred a few weeks after his 1 March 2006 receipt of the Limelight fax.

[48] After speaking with Da Silva, M.M. purchased 500 shares in Limelight, for \$2 per share. He sent a cheque for \$1000 to Limelight on or around 11 April 2006.

[49] M.M. is not an accredited investor, as defined by NI 45-106. He testified that at no time did any one from Limelight ask him any questions in order to ascertain if he was an accredited investor. M.M. testified that the only questions surrounding money posed to him by O'Brien and Da Silva were to "find out how much I had that I could lay out".

[50] Prior to his Limelight investment, M.M. had limited investment experience and invested only in GIC's and mutual funds. He indicated that after his experience with Limelight he expects to remain a conservative investor.

ii. P. F.

[51] P.F. testified before the Panel on 26 June 2007. P.F. lives in southern New Brunswick and is a small retail business owner. At all times relevant to this proceeding he was a resident of New Brunswick.

[52] P.F. made two investments in Limelight, the first in September 2005 in the amount of \$1000 representing 500 shares at \$2 per share; the second on 21 April 2006 for \$2500 representing 2500 shares at \$1 per share.

[53] P.F. testified that he was first contacted via telephone by a representative from Limelight named Ove Simonsen ("Simonsen"). Simonsen presented Limelight as being in the entertainment business, with an interest in a fishing show, and that it was into musical recording companies, radio stations and other such entertainment ventures. P.F. testified that they made reference to their involvement in Shania Twain's next collaborative CD.

[54] P.F. made his first investment in Limelight, in the amount of \$1000, in September of 2005. After his investment, he received a share certificate and a letter and business card from Campbell, thanking him for his investment. He also received two copies of a purchase agreement; he signed both copies and returned one to Limelight. The date of receipt of these materials was around 15 September 2005.

[55] P.F. testified that he made his second investment in Limelight on 21 April 2006, after receiving a call on that date from Joseph Daniels ("Daniels"), a representative of Limelight. He was offered a "great deal", being a previous investor, of \$1 per share, instead of \$2 per share. He sent a cheque that day in the amount of \$2500 to Limelight, representing 2500 shares. Daniels told P.F. that the shares would be going public in mid-2006, and estimated the shares would increase in value to \$5 or \$6.

[56] P.F. received no share certificate, purchase agreement or other information from Limelight after his second investment. After a short time passed without receipt of the share certificate, P.F. testified that he tried to contact

Campbell at the number provided on his business card, and to contact Daniels at the number Daniels had provided, but was unable to reach anyone at Limelight.

[57] P.F. is not an accredited investor. He testified that at no time did anyone from Limelight make any attempt to ascertain whether he was an accredited investor. Prior to his Limelight investments, P.F.'s investments were limited to such things as mutual funds in his RRSP, and his children's RESPs.

[58] P.F. testified that he is embarrassed by this investment, and will never do any such investments again. He will only invest in secure, conservative investments from now on.

iii. P. C.

[59] P.C. testified before the Panel on 26 June 2007. He lives in southern New Brunswick, and at all times relevant to this proceeding was a resident of New Brunswick. P.C. owns a private consulting business.

[60] In October 2005 P.C. invested \$2000 in Limelight, representing 1000 shares for \$2 per share.

[61] P.C. testified that in October 2005 he received an unsolicited call via telephone from Simonsen, for Limelight. Simonsen provided an overview of Limelight's business, highlighting its involvement in a fishing show and its production of an upcoming CD for Shania Twain. Simonsen told P.C. that Limelight was trying to solicit some funds to go public.

[62] P.C. testified that Simonsen told him that Limelight expected to go public within four to six months, and that he expected the shares to at least double in value.

[63] P.C. requested more information, and on 12 October 2005 received via fax documents from Limelight, including Limelight's Executive Summary. P.C. also testified that he reviewed the Limelight website prior to making his investment. On 19 October he received a fax with the invoice for the 1000 shares he had decided to purchase, along with instructions for Purolator pickup. He sent the cheque the same day.

[64] In response to his investment, he received a share certificate and a business card of David Campbell. On 28 November 2005 he received a

purchase agreement from Simonsen, which he signed and returned around 6 December 2005.

[65] After his initial purchase, P.C. received a call in March 2006 from Da Silva, asking if he would like to partake in a special share offering for existing shareholders. Da Silva advised that he was selling a share for \$1 instead of \$2.

[66] P.C. testified that Da Silva advised him that the shares were going public very soon. P.C. asked where Limelight was going to be listed, and in response Da Silva sent P.C. an email from a law firm in the U.S., and told P.C. that he should contact the lawyer, Virginia Sourlis, to get more details on the company going public. P.C. did not contact Sourlis as he was suspicious of the second solicitation.

[67] The email forwarded to P.C. by Da Silva was between Campbell and Sourlis, wherein Sourlis provided Campbell the name of a broker who he should contact to file a "Form 211". Da Silva presented this email to P.C. as proof that Limelight was going public.

[68] P.C. is not an accredited investor. He testified that at no time did anyone from Limelight attempt to ascertain whether or not he was an accredited investor. Prior to his investment in Limelight his investment activity had been conservative, mainly mutual funds and bonds. He had also invested through his company in a failed local business. After this experience P.C. testified that he will remain conservative in his investing.

iv. Other New Brunswick Investors

[69] Staff presented evidence through the testimony of the Investigator and through affidavits filed with the Commission of the investments in Limelight made by several other New Brunswick residents.

[70] In the course of his investigation, the Investigator received a copy of Limelight's shareholder registry from the OSC, and copies of investors' cheques from TD Bank. These documents show that Limelight made 50 distributions to 40 NB investors for a total amount of \$78,739.99. The NB investors made up only a portion of the total distributions across Canada.

[71] In addition to the three investors who testified before the Panel, the Investigator testified that he spoke to other New Brunswick residents who had

been solicited to purchase shares in Limelight. The sales process and the ensuing documentation relayed and/or sent to the Investigator by these investors was similar to that as described by M.M., P.F. and P.C..

[72] The Investigator sent letters and questionnaires in April 2006 to the NB investors identified on Limelight's shareholder registry. Many investors responded in or around May 2006 and provided completed questionnaires to the Investigator. The details surrounding their solicitation and share purchases were again substantially similar to that presented by M.M., P.F. and P.C.

[73] The evidence shows that the New Brunswick residents were approached via cold calls from 2005 into early 2006 to invest in Limelight, which was described as being in the entertainment business. Several different salespeople were involved in Limelight's solicitations. The individuals targeted appear to be small business owners.

[74] With slight variations, the pitch was the following: The shares were sold initially at \$2 per share. The representations given to the New Brunswick residents were that the shares would be listed on an exchange within weeks or months (NASDAQ was specifically mentioned to at least one investor), and at that time the shares would be trading in the \$5, \$6 or \$7 range. The New Brunswick residents were not (with the exception of one noted by the Investigator) accredited, as defined in NI 45-106. There was no effort from Limelight to establish whether any NB investors were accredited.

[75] Documents provided to the Investigator by the NB investors include share purchase agreements (provided after the share purchase) signed by Da Silva, and share certificates in Limelight signed by Da Silva as President and Campbell as Secretary.

[76] Two NB investors, S.P. and R.P., provided the Investigator with a copy of correspondence they had received from Campbell thanking them for their investments. The letter identified Campbell as Secretary, Treasurer and Director. Campbell's business cards had been provided with the share certificate to S.P., as his business cards had been provided to P.F. and P.C., and to at least three other NB investors who sent a copy to the Investigator.

[77] No investors, including M.M., P.F. and P.C., had any of their invested funds returned.

c. Da Silva and Campbell's Involvement in the Solicitation of Limelight Investors

[78] Throughout 2005, to and including April 2006, when New Brunswick residents were being solicited by Limelight, Da Silva and Campbell were the directing minds of Limelight. Da Silva was the President and a director, while Campbell was the Secretary, Treasurer and director.

[79] Bank records show that Da Silva purported to resign as President and director of Limelight on 17 April 2006, and that Campbell assumed the presidency of Limelight after that time.

[80] Da Silva called two investors who testified before the Panel, M.M. and P.C., and solicited their investment in Limelight.

[81] While there is no evidence that Campbell spoke directly to NB investors, the evidence is clear that Campbell was actively involved in the solicitation process. He sent letters to at least 2 NB investors thanking them for their investment, and his business card was part of the packages sent to the NB investors along with their share certificates.

[82] The OSC interviewed Da Silva with his consent on 13 December 2005. Da Silva spoke about Limelight's sales procedure and confirmed that Campbell was in charge of the sales staff. Da Silva also stated that Limelight retained a number of salespersons for the purpose of soliciting investors in several Canadian jurisdictions, and these salespersons were paid a commission.

[83] The financial records of TD Bank show payments to various Limelight salespersons, supporting Da Silva's statements about the sales staff.

d. The Financial Records

[84] Staff presented Limelight's financial records, which were received from both Limelight and TD Bank. Staff summarized the financial records as they related to the funds received from NB investors.

[85] The signatures of both Da Silva and Campbell are found on various TD Bank documents. The Limelight cheques were printed to reflect signing by the President. Da Silva was President and signed the cheques until his resignation

around 17 April 2006. Soon after this time it appears Campbell became President, as there is a signature card signed by Campbell as President of Limelight which was provided as part of the TD Bank documents. Staff also presented evidence that Campbell signed cheques, deposits and withdrawal slips on the TD Bank account after the 17 April 2006 resignation of Da Silva.

[86] Limelight's financial records reveal that approximately \$2.5 million dollars was raised from investors. Of this, \$78,739.99 was raised through 50 distributions to 40 NB investors. The majority of the \$2.5 million was dissipated by payments to sales staff, Da Silva and Campbell (through their personal companies, outlined below) and wire transfers to unknown accounts and unknown recipients.

[87] Cheques in the amount of \$191,403.48 were written on the TD Bank account and paid to 1290310 Ontario Limited, a company of which Da Silva is the sole director.

[88] Cheques in the amount of \$98,810.75 were written on the TD Bank account and paid to 1583292 Ontario Inc., a company of which Campbell is the sole director.

[89] Cheques in the amount of \$49,465.00 were written on the TD Bank account and paid to 2080548 Ontario Inc., a company of which Campbell is the sole director.

[90] At least \$85,000.00 was transferred out of the TD Bank account to unknown recipients in three transfers in April, May and June of 2006, around the time of the Commission issued the temporary and permanent cease trade orders.

3. DECISION AND SUPPORTING REASONS

a. Jurisdiction and Mandate of the Commission

[91] As part of its mandate, the Commission must protect New Brunswick investors and the integrity of New Brunswick's capital markets. The Panel's role is to render relief appropriate to the infraction. The purpose of any order granted by the Panel is the protection of investors and the future prevention of such conduct from occurring in the future. General deterrence is an important factor for the Panel to consider.

b. Illegal Distribution

[92] Staff allege that the Respondents were involved in the illegal distribution of Limelight securities, in contravention of paragraphs 45(a) and 71(1)(a) of the *Act*.

[93] Section 45 of the *Act* reads:

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.

[94] Subsection 71(1) of the *Act* reads:

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.

[95] The term "trade" is defined in section 1 of the *Act* to include:

(a) a sale or disposition of a security for valuable consideration or an attempt to sell or dispose of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in paragraph (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,

. . .

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

[96] The term "distribution" is defined in section 1 of the *Act* to include:

(a) a trade in securities of an issuer that have not been previously issued

i. Limelight Entertainment Inc.

[97] The Panel finds that at all material times the evidence establishes that Limelight was not and has never been registered with the Commission in any capacity; Limelight made no application for exemption, no filing of exempt distributions or in fact any filing at all with the Commission; Limelight's salespersons were not registered salespersons with the Commission; and Limelight had not filed a prospectus.

[98] Limelight has never sought an exemption, and none has been granted, with respect to the requirements of sections 45 and 71 of the *Act*.

[99] The shares of Limelight are securities as defined in section 1 of the *Act*. The Panel finds that the evidence establishes that Limelight fraudulently made 50 distributions to 40 NB investors, intentionally defrauding these investors of almost \$80,000.

[100] The Panel is of the opinion that none of the NB investors were canvassed as to their potential status as accredited investors, pursuant to National Instrument 45-106 *Prospectus and Registration Exemptions*. If inquiries had been made, only one NB investor may have had this status. No exemption would, therefore, have been available to Limelight for most of the distributions to NB investors.

[101] The Panel finds that the selling activities of Limelight and its salespeople in relation to NB investors were clearly trades or acts in furtherance of trading activities. The distributions to NB investors were first trades made pursuant to subscription agreements with Limelight, and are distributions as defined in the *Act*.

[102] It is the determination of the Panel that Limelight contravened sections 45 and 71 of the *Act*, resulting in the deliberate defrauding of numerous NB investors.

ii. Carlos Da Silva

[103] The Panel finds Da Silva responsible for the illegal, fraudulent distributions of Limelight. Along with his involvement as a controlling mind of Limelight, Da Silva directly solicited NB investors.

[104] Da Silva's solicitation of M.M.'s investment constitutes a trade as defined in the *Act*. Da Silva's attempted solicitation of P.C.'s investment in a second fraudulent distribution of Limelight shares constitute a trade as defined in the *Act*.

[105] At all material times Da Silva was not registered with the Commission.

[106] The Panel finds that Da Silva was deliberately and with an intent to defraud engaged in illegal distributions of Limelight securities to NB investors, and that Da Silva contravened paragraphs 45(a) and 71(1)(a) of the *Act*.

iii. David Campbell

[107] The Panel finds Campbell, along with Da Silva, responsible for the illegal distributions of Limelight. As well as being a controlling mind of Limelight, the Panel finds Campbell was a directing force behind the solicitation of NB investors.

[108] Along with his supervisory role, bank records show that Campbell deposited cheques from NB investors into the TD Bank account. The Panel finds that these deposits are acts in furtherance of a trade, as they further the sale of a security for valuable consideration, as set out in the *Act*.

[109] The Panel finds that Campbell was deliberately and with the intent to defraud engaged in illegal distributions of Limelight securities, and that Campbell contravened sections 45 and 71 of the *Act*.

c. Prohibited Representations

[110] Staff allege that the Respondents made prohibited representations in contravention of subsections 58(2) and (3) of the *Act*. At the time of the alleged contravention, subsections 58(2) and (3) read:

58(2) No person, with the intention of effecting a trade in a security, shall make any representation, orally or in writing, relating to the future value or price of the security that is not in accordance with the regulations.

58(3) No person, with the intention of effecting a trade in a security, shall make any representation, orally or in writing, that the security will be listed on any exchange or quoted on any quotation and trade reporting system or that application has been or will be made to list the security on any exchange or quote the security on any quotation and trade reporting system unless:

- (a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any exchange

or quoted on any quotation and trade reporting system,

- (b) the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation,
- (c) the written permission of the Executive Director has been obtained by the person, or
- (d) the representation is exempted under the regulations from the application of this subsection.

i. Limelight Entertainment Inc.

[111] NB investors M.M., P.F. and P.C all testified that the salespeople who contacted them from Limelight made representations that they expected that the value of Limelight shares would increase from the \$2 per share initial purchase price to a range of \$4 or \$6 per share. Other NB investors received similar claims of share value increases from Limelight salespeople.

[112] Limelight is responsible for the actions and representations of its sales force. The Panel is of the opinion that Limelight made prohibited representations with respect to the future value of a security with the intention of effecting a trade, and consequently the Panel finds that Limelight contravened subsection 58(2) of the *Act*.

[113] M.M., P.F. and P.C. all testified that the Limelight sales staff indicated that the shares of Limelight would be "going public" within a few weeks or months of their investments. The testimony of these NB investors indicated that they understood "going public" to mean that the securities were going to be listed on a stock exchange. Other NB investors received similar representations as part of the Limelight sales pitch. One investor specifically recalled that NASDAQ was mentioned by the Limelight representative.

[114] The Panel finds that Limelight, through its salespeople, made prohibited representations with respect to the listing of Limelight securities on an exchange, with the intention of effecting a trade. Consequently, the Panel finds that Limelight contravened subsection 58(3) of the *Act*.

ii. Carlos Da Silva

[115] Along with being a controlling mind of Limelight at the times of the prohibited representations, the Panel is of the opinion that Da Silva made prohibited representations to NB investors, namely that the value of Limelight securities would increase and that Limelight was going to be listed on a stock exchange. One investor even received email correspondence from Da Silva which Da Silva purported to be evidence of Limelight's imminent listing on an exchange.

[116] The Panel finds that Da Silva made these prohibited representations with the intention of effecting a trade in a security. Consequently, the Panel finds that Da Silva contravened subsections 58(2) and (3) of the *Act*.

iii. David Campbell

[117] Campbell was a controlling mind of Limelight, and the Panel is of the opinion that he was in charge of the Limelight sales force and involved in the solicitation of NB investors. The typical Limelight sales pitch included routine representations that the value of Limelight shares would increase substantially, usually in the range of \$4 to \$6 per share from an initial investment of \$2 per share.

[118] The typical Limelight sales pitch also included routine representations that the Limelight shares would be listed on an exchange. A timeline for this listing was usually given, ranging from a few weeks to a few months. In some instances specifics about the future listing were provided.

[119] The Panel finds that Campbell was aware of and sanctioned the making of prohibited representations to NB investors both of the future share value and of the listing on an exchange. These prohibited representations were made with the intention of effecting a trade in a security. Consequently, the Panel finds that Campbell contravened subsections 58(2) and (3) of the *Act*.

d. Breach of Temporary Cease Trade Order

[120] The Commission issued a TCTO against Limelight on 11 April 2006. This TCTO provided that all trading in the securities of Limelight by its officers, directors, employees and/or agents cease.

[121] The TCTO was served on both Da Silva and Campbell, in their capacity as officers and directors of Limelight, on 20 April 2006.

[122] P.F. testified before the Panel that he was solicited by Limelight to purchase further shares on 21 April 2006. He in fact made a further investment in Limelight, and a courier was sent from Limelight to pick up his cheque on this same date.

[123] The TD Bank records show that P.F.'s 21 April 2006 cheque was deposited into the TD Bank account on 25 April 2006.

[124] The solicitation by Limelight and the picking up and cashing of P.F.'s cheque all occurred after Limelight was served with the TCTO.

[125] The TD Bank records also show that the cheques of other NB investors were deposited into the TD Bank account after Da Silva and Campbell were served with the TCTO.

i. Carlos Da Silva

[126] Da Silva purported to resign as President of Limelight on 17 April 2006, three days prior to his being served with the TCTO. Da Silva signed a notice of his resignation which was dated 17 April 2006 and was addressed to Campbell. This notice was provided to TD Bank, however the date of its receipt by TD Bank is not known. From this notice and the other TD Bank financial records it appears Da Silva made attempts to distance himself from Limelight around this time.

[127] The TD banking records show that some Limelight cheques were still being signed by Da Silva after 17 April 2006; however Staff presented no direct evidence that Da Silva breached the TCTO by dealing either with NB investors or the funds provided by NB investors after being served with the TCTO. As such, the Panel does not find any breach of the TCTO by Da Silva.

ii. David Campbell

[128] Campbell was also served with the TCTO on 20 April 2006. However, unlike Da Silva the Panel is of the opinion that Campbell made no attempt to distance himself from Limelight on or before that date. In fact, the Panel finds that Campbell assumed the Presidency of Limelight on or around this date, and with this role assumed the sole ability to sign cheques on the TD Bank account. He also remained a controlling mind of the company.

[129] The Panel finds that at all material times Campbell was in charge of the Limelight sales force. Sales calls continued to be made to NB investors after the service of the TCTO. Cheques from NB investors were cashed after the service of the TCTO, while Campbell had the sole signing authority on the TD Bank account.

[130] P.F.'s cheque, which was sent to Limelight on 21 April 2006 via courier set up by Limelight sales staff, was deposited into the TD Bank account on 25 April 2006. The deposit slip reads "Dave C.", though it appears to the Panel that when compared to the other documents signed by Campbell this "Dave C." is not Campbell's regular signature.

[131] On 26 April 2006, a cheque from another NB investor, Y.T., was deposited into the TD Bank account as part of a larger deposit in the amount of \$21,500. The deposit slip has Campbell's regular signature, as evidenced from the financial and corporate records provided.

[132] On 27 April 2006, a cheque from another NB investor, B.C., was deposited into the TD Bank account. There was no deposit slip provided. This same day, \$50,000 was transferred out of the TD Bank account via wire transfer to an unknown destination. On 28 April 2006, \$20,000 was transferred out of the TD Bank account via wire transfer.

[133] By 26 April 2006, the banking records show that Campbell was signing Limelight cheques as president. On this date he signed as president a cheque in the amount of \$1,000 to Mr. Tuovi, which was drawn against the TD Bank account on 4 May 2006.

[134] The Panel finds that along with assuming the Presidency of Limelight on or around the time of service of the TCTO, that Campbell himself cashed cheques from NB investors after being served with the TCTO. The Panel finds that cashing the cheques of NB investors in payment for Limelight securities constitutes an act in furtherance of trade.

[135] The Panel finds that Campbell breached the TCTO, both through his role as supervisor of the Limelight sales force which continued soliciting at least one NB investor after service of the TCTO, and through his cashing cheques of NB investors in payment for Limelight securities after the date he was served with the

TCTO. This breach of the TCTO displays a flagrant disregard for the jurisdiction of the Commission.

e. Administrative Penalty

[136] Section 186 of the Act provides the Commission with the ability to order an administrative penalty in specific circumstances:

186(1) The Commission, after a hearing, may order a person to pay an administrative penalty of not more than \$750,000 if the Commission

(a) determines that the person has contravened or failed to comply with New Brunswick securities law, and

(b) is of the opinion that it is in the public interest to make the order.

186(2) The Commission may make an order under this section notwithstanding the imposition of any other penalty on the person or the making of any other order by the Commission related to the same matter.

i. Contravention of New Brunswick Securities Law

[137] The Panel has found, for the reasons cited above, that the Respondents contravened or failed to comply with New Brunswick securities law in the following manner:

- By illegally trading and distributing Limelight securities, Limelight, Da Silva and Campbell contravened paragraphs 45(a) and 71(1)(a) of the *Act*;
- By making representations with the intention of effecting a trade in Limelight securities that the value of Limelight securities would increase and that Limelight securities would be listed on an exchange, Limelight, Da Silva and Campbell contravened subsections 58(2) and 58(3) of the *Act*; and
- By continuing to solicit New Brunswick investors for Limelight after being served with the Temporary Cease Trade Order issued by the Commission on 11 April 2006, and by cashing the cheques of New Brunswick investors after being served with the Temporary Cease Trade Order issued by the Commission on 11 April 2006, Campbell failed to comply with the Temporary Cease Trade Order issued by the Commission against Limelight on 11 April 2006, an offence under subsection 179(2) of the *Act*.

ii. Acting Contrary to Public Interest

[138] Having found contraventions of New Brunswick securities laws, the Panel must consider whether it is in the public interest in the context of the

Commission's mandate to impose an administrative penalty on the Respondents.

[139] Staff cited cases setting out factors to be considered by securities commissions prior to the imposition of administrative penalties. The cases include British Columbia's *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22; Alberta's *Re Lamoureux* [2002] A.S.C.D. 125; and Ontario's *Re Cheung* 2005 CarswellOnt 8296. Staff also provided an extensive list of cases from securities commissions across Canada involving the imposition of administrative penalties.

[140] While the Panel stresses that each case is to be decided on its own facts, and that the circumstances of each case will determine whether it is in the public interest to order an administrative penalty, the Panel has reviewed the cited decisions and accepts the following as a general list of factors to consider when assessing an administrative penalty:

- The seriousness of the respondent's conduct and whether the respondent recognizes the seriousness of the improper conduct;
- Any harm suffered by investors as a result of the conduct;
- The damage done to the integrity of the capital markets;
- The need to deter others who participate in the capital markets from engaging in similar conduct;
- The need to demonstrate the consequences of inappropriate conduct to others who participate in the capital markets;
- The respondent's experience, reputation and previous activity in the capital markets, including any sanctions;
- The extent to which the respondent was enriched;
- Previous decisions in similar circumstances; and
- Any mitigating factors.

[141] Along with the above factors and the specific circumstances of the case, the Panel also considers general deterrence as being an important factor in their decision. As the Supreme Court of Canada stated in *Re Cartaway Resources*

Corp. [2004] 1 S.C.R. 672 at paragraph 60, also cited in the OSC's decision in *Re Cheung*, 2005 CarswellOnt 8269 at paragraph 15:

...nothing inherent in the Commission's public interest jurisdiction prevents the Commission from considering general deterrence in making an order. To the contrary, it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative.

A. Seriousness of Conduct and Respondents' Recognition of Seriousness of Conduct

[142] Limelight, Da Silva and Campbell are responsible for the illegal trades and distributions of Limelight securities to New Brunswick investors, and for the prohibited representations made by Limelight's sales staff and by Da Silva directly.

[143] The actions of the Respondents were clearly contrary to the public interest. These actions put New Brunswickers at risk; they resulted in almost \$80,000.00 being essentially stolen from NB investors. The Respondents flouted New Brunswick securities law. They jeopardized the integrity of New Brunswick's capital markets by eroding investor confidence in both the markets and the regulator.

[144] Neither Limelight, Da Silva nor Campbell was registered with the Commission, and no documents were filed with the Commission on behalf of Limelight. Limelight, Campbell and Da Silva exhibited a complete disregard for New Brunswick securities law.

[145] Along with the illegal distributions and prohibited representations, Campbell breached the TCTO issued by the Commission on 11 April 2006, highlighting Campbell's blatant disregard for New Brunswick securities law and for the jurisdiction of the Commission.

[146] Neither Limelight, Da Silva nor Campbell filed any materials in these proceedings, nor did they present any evidence. Though represented by counsel for a short period of time, none of these Respondents appeared before the Panel to testify, and they did not contest any evidence presented by Staff. Through these actions, along with Limelight and Campbell's disregard for the TCTO, the parties have demonstrated that they were indifferent to the

seriousness of their actions and the harm they had caused to New Brunswick's investors and capital markets.

B. Harm to Investors and to Capital Markets

[147] In total, 50 illegal distributions were made to 40 NB investors. \$78,739.99 was fraudulently taken from these NB investors and none has had any money returned. Though only a small portion of Limelight's total theft, the sums lost were significant to the individual NB investors and damaged their confidence in New Brunswick's capital markets. New Brunswick's capital markets have been consequently impaired.

C. Deterrence

[148] The Panel is of the opinion that it is important to send a strong message to those who participate in New Brunswick's capital markets and who deal with New Brunswick investors that the Commission will not tolerate fraudulent behaviour. The Commission takes very seriously its mandate of protecting investors, and its role as advocate for well-regulated capital markets.

[149] The Panel considers the actions of the Respondents to be an attack on New Brunswick investors, an attack on New Brunswick's capital markets and an attack on the Commission's credibility as a regulator. The Commission will not tolerate behaviour which impairs local investing; the actions of the Respondents had such an effect.

D. Experience and Activity in the Capital Markets

[150] Both Da Silva and Campbell have a history of working in the capital markets. Both Da Silva and Campbell have been associated with Euston Capital, a company sanctioned for illegal distributions in Alberta, Ontario and Saskatchewan. Da Silva also worked at Marchment & McKay, a company sanctioned for illegal distributions in Ontario. Both of these Respondents are experienced in the securities industry.

E. Enrichment of Respondents

[151] From the money improperly taken by Limelight through its illegal distributions, large amounts were withdrawn by Da Silva and Campbell – over \$191,000 and \$148,000 respectively – and deposited into the personal corporations of Da Silva and Campbell.

[152] Additionally, the evidence shows that after Campbell assumed the Presidency of Limelight, and during which time the Respondents were served with the 11 April 2006 TCTO, approximately \$85,000 was transferred out of the TD Bank account to unknown destinations.

4. ORDER

[153] Upon a review of the circumstances in this case and of previous decisions concerning administrative penalties, the Panel finds it in the public interest to make orders under section 186 against Limelight, Da Silva and Campbell.

[154] The penalties ordered by the Panel correspond to the seriousness of the Respondents' violations of New Brunswick securities law, and will protect the investing public in New Brunswick by providing a strong message of general deterrence for this type of behaviour.

[155] The Panel finds the conduct of the Respondents to be totally reprehensible. The fraud perpetrated by the Respondents directly attacks the integrity of our system and the Commission's ability to protect investors. Therefore along with the orders under section 186, the Panel expects Staff to pursue collection of the administrative penalties to the greatest extent possible in accordance with the law. This may include taking actions outside of the province of New Brunswick.

[156] The Panel is of the opinion that these penalties and their collection will reinforce its message that the Commission will use all its resources in preventing any type of fraudulent activity involving New Brunswick's investors and capital markets.

[157] For the reasons cited above, the Panel orders:

- a. Pursuant to section 186(1) of the *Act*, the Respondent Limelight Entertainment Inc. shall pay an administrative penalty for failing to comply with New Brunswick securities law in the amount of \$100,000.00 (one hundred thousand dollars);**
- b. Pursuant to section 186(1) of the *Act*, the Respondent Carlos Da Silva shall pay an administrative penalty for failing to comply with New Brunswick securities law in the amount of \$100,000.00 (one hundred thousand dollars);**

- c. Pursuant to section 186(1) of the *Act*, the Respondent David Campbell shall pay an administrative penalty for failing to comply with New Brunswick securities law in the amount of \$100,000.00 (one hundred thousand dollars);
- d. Pursuant to section 186(1) of the *Act*, the Respondent David Campbell shall pay an administrative penalty for breach of the 11 April 2006 Temporary Cease Trade Order issued by the Commission in the amount of \$50,000.00 (fifty thousand dollars); and
- e. Pursuant to section 185(1) of the *Act*, the Respondents Carlos Da Silva and David Campbell shall each pay \$5,000.00 (five thousand dollars) representing a total of \$10,000.00 (ten thousand dollars), being \$2,000.00 (two thousand dollars) for each of the 5 (five) days or partial days of hearings held in this matter, in accordance with Local Rule 11-501 *Fee Rule*.

Dated at the City of Saint John this 17 day of August, 2007.

David T. Hashey, Q.C., Panel Chair

Donne W. Smith, Panel Member

Hugh J. Flemming, Q.C., Panel Member

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