

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

- and -

IN THE MATTER OF
LOCATE TECHNOLOGIES INC., TUBTRON CONTROLS CORP.,
BRADLEY CORPORATE SERVICES LTD., 706166 ALBERTA LTD.,
LORNE DREVER, HARRY NILES, MICHAEL CODY AND
DONALD NASON

REASONS FOR THE DECISION:
Locate Technologies Inc., Tubtron Controls Corp., 706166 Alberta Ltd.
and Lorne Drever

Date of Hearing: 25 August 2008

Date of decision: 29 October 2008

Panel:

Anne La Forest, Panel Chair

Céline Trifts, Panel Member

Representatives:

Jake van der Laan and Mark McElman

For the staff of the New Brunswick
Securities Commission

Paul Smith

For Locate Technologies Inc.,
Tubtron Controls Corp., 706166
Alberta Ltd., and Lorne Drever

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**REASONS FOR THE DECISION:
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and Lorne Drever**

1. INTRODUCTION

[1] On 15 August 2008, Staff of the Commission (Staff) filed a Settlement Agreement (Agreement) reached between Staff and the respondents Locate Technologies Inc. (Locate), Tubtron Controls Corp. (Tubtron), 706166 Alberta Ltd. (706166) and Lorne Drever (Drever) (collectively, Respondents). The Agreement contained a Statement of Facts (Statement) and a draft order setting out jointly proposed sanctions against the Respondents.

[2] A Settlement Hearing was held on 25 August 2008, wherein a Panel was asked to approve the Agreement and make the order as set out in the Agreement. The Respondents were represented by counsel at the hearing, and Drever was in attendance via conference call. Staff and the Respondents, through their counsel, confirmed their endorsement of the Agreement and their acceptance of its content and of the facts contained in the Statement. Staff and the Respondents also filed a joint submission in support of the Agreement.

[3] The Panel accepts the Statement in the Agreement as the evidence upon which to base its decision in this matter. The content of the Statement and the Agreement was not disputed, and no contrary evidence was provided.

[4] Based on the facts as set out in the Statement, and the submissions of both parties, for the reasons set out below the Panel approved the Agreement and issued the order as requested.

2. FACTS

[5] The relevant facts in this matter are set out in the Statement, found in Part II of the Agreement. As the Statement shows, the Respondents have a long history of involvement with the Commission and its predecessor, the Administrator of the Securities Branch (Securities Branch) of the Department of Justice, in regards to their trading activities.

[6] This Panel does not wish to reproduce the facts within these Reasons for Decision, as the Reasons are to be read in conjunction with the Agreement, particularly with the Statement as contained in Part II. What follows instead is a very brief summary of the Respondents' involvement with the Commission, to provide an idea of the Respondents' lengthy history of securities law violations and of the substantial amounts of money received from New Brunswick investors.

[7] Locate began trading in New Brunswick in December 2000, without being registered with the Commission or having filed a prospectus. Staff of the Securities Branch first contacted Locate regarding their non-compliance with the then applicable legislation, the *Security Frauds Prevention Act*, in November 2001.

[8] Between November 2001 and October 2007, Locate, Drever and Tubtron made numerous misrepresentations, breached undertakings and provided incomplete information to the Deputy Administrator, Enforcement and

Compliance, of the Securities Branch, and later to Staff, regarding the trading activities of Locate and Tubtron.

[9] The Court of Queen's Bench issued orders (Court Orders) in February and March of 2004, prohibiting trading by Locate, Tubtron and Drever. Locate, Tubtron and Drever breached the Court Orders on numerous occasions.

[10] Between February 2004, the date of the first court order prohibiting trading, and September 2006, at least \$840,000.00 was received by 706166 further to Locate share sales to New Brunswick residents; and at least \$180,000.00 was received by Tubtron further to Tubtron share sales to New Brunswick residents. There were over 200 unauthorized share transactions with New Brunswick residents. None of the funds provided to 706166 were advanced to Locate or Tubtron for share purchases; part of these funds were instead used by Drever for personal and other expenses unrelated to the activities of Tubtron or Locate.

3. FINDINGS

[11] Part II of the Agreement, at paragraphs 59 through 63, contain admissions by the Respondents that their acts constitute repeated violations of the *Securities Act (Act)*. The Panel accepts these admissions, and therefore finds the following:

- (a) The respondents Locate, Tubtron and Drever agree that they have repeatedly violated section 45 of the *Act* by trading in securities while not registered to do so;
- (b) The respondents Locate, Tubtron and Drever agree that they have repeatedly violated section 71 of the *Act* by trading in securities without having filed a prospectus;
- (c) The respondent 706166 agrees that it repeatedly engaged in acts in furtherance of trading in securities, while not registered to do so;

(d) The respondents Locate, Tubtron and Drever agree that they have repeatedly violated the orders of the Court of Queen's Bench issued against them in February and March 2004; and

(e) The respondent Drever agrees that he has repeatedly made untrue and misleading statements to Staff, contrary to paragraph 179(2)(a) and section 58 of the *Act*.

[12] The Respondents also agree that the breaches and violations of undertakings, promises, orders and the provisions of the *Act* constitute acts contrary to the public interest.

[13] The Panel accepts this admission and finds that, based on the facts as set out in the Statement, the Respondents unquestionably acted contrary to the public interest. The role of the Commission is two-fold: to protect investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets. Key to these roles is the process of disclosure. Failure to register, making representations to the Commission, and failure to file prospectuses deprive investors of the protections provided by disclosure. These actions also negatively affect capital markets, which require open disclosure to be fair and efficient.

4. PROPOSED SANCTIONS

[14] The Agreement contains sanctions which Staff and the Respondents jointly propose be issued against the Respondents. The sanctions are as follows:

1. Pursuant to paragraphs 184 (1)(f) and (j) and subsection 184(2) of the *Act*:
 - a. Locate and Tubtron shall offer a right of rescission and comply with any requests for rescission and refund, in accordance with the terms of the Agreement.
2. Pursuant to paragraphs 184(1)(c)(d) and (i) of the *Act*, other than to effect the obligations regarding the right of rescission:

- a. Drever shall be permanently barred from trading in any securities;
 - b. Drever shall be permanently barred from becoming, acting or continuing to act as a director or officer of any issuer engaging in securities related activities in New Brunswick;
 - c. Locate, Tubtron and 706166 shall be permanently barred from issuing any securities to residents of New Brunswick; and
 - d. Locate, Tubtron and 706166 shall be permanently barred from the use of any exemptions available under New Brunswick securities laws.
3. Pursuant to subsection 186(1) of the *Act*:
- a. Drever shall pay an administrative penalty in the amount of \$100,000.00;
 - b. Locate shall pay an administrative penalty in the amount of \$60,000.00; and
 - c. Tubtron shall pay an administrative penalty in the amount of \$40,000.00.
4. Pursuant to subsection 185(1) of the *Act*:
- a. The Respondents shall, jointly and severally, pay costs of the investigation in the amount of \$25,000.00.

5. LAW

a. Role of Panel

[15] Paragraph 191(a) of the *Act* provides for an administrative proceeding conducted by the Commission under the *Act* to be disposed of by an agreement approved by the Commission. The Agreement, to have legal effect, must be approved by the Panel.

[16] The role of this Panel in considering the Agreement is not to replace what the parties have agreed to, but rather to ensure that the proposed sanctions are within the parameters of what is reasonable. Prior to imposing the proposed

sanctions, as stated in *MCJC Holdings Inc., Re* (2002), 25 O.S.C.B. 1133 at para. 4, the Commission must be “satisfied that proposed sanctions are proportionately appropriate with respect to the circumstances facing the particular respondents.”

[17] The Panel’s role, as the Supreme Court of Canada highlighted in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] S.C.R. 132 at paragraphs 42 and 43, is neither remedial nor punitive; it is protective and preventative. The Panel is to exercise its jurisdiction to prevent future harm to the capital markets. And, as set out in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at paragraph 60, this role includes an element of general deterrence. *Re Cartaway* confirms that it is reasonable to view general deterrence as an appropriate and necessary consideration in making orders that are both preventative and protective.

[18] Numerous decisions both of this Commission and others have set out lists of relevant factors to be considered when considering the appropriateness of proposed sanctions in a settlement agreement. These factors, recently discussed by the Alberta Securities Commission in *Re Executive Marketing & Strategies Ltd.*, 2008 ABASC 384, a case highlighted by Staff and the Respondents in their joint submission, include:

- (a) the seriousness of the allegations proved,
- (b) the respondent’s past conduct,
- (c) mitigating factors
- (d) the respondent’s experience in the capital markets and the respondent’s level of activity in the capital markets,
- (e) whether the respondent recognizes the seriousness of the improper activity,
- (f) the harm suffered by investors as a result of the respondent’s activities,
- (g) the benefits received by the respondent as a result of the improper activity,

- (h) the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction,
- (i) the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities,
- (j) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity,
- (k) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets, and
- (l) previous decisions made in similar circumstances.

b. Analysis of factors

[19] The sanctions proposed by Staff and the Respondents are substantial. They involve a permanent trading ban on the Respondents and substantial administrative penalties, particularly with respect to the individual penalty proposed for Drever. The respondents Locate and Tubtron, under the Agreement, must also provide disclosure and offer a right of rescission and refund to New Brunswick investors.

[20] To determine the appropriateness of the proposed sanctions, the Panel looked to the factors set out in *Re Executive Marketing & Strategies Ltd.*

[21] Key to the Panel's analysis is the seriousness of the offenses in this case. As discussed above at paragraph [13], disclosure is the core of the securities regulation system. A failure to provide disclosure through prospectuses or to properly utilize the exemptions gives rise to considerable concerns in terms of ensuring efficient capital markets and the adequate protection of investors.

[22] In regards to past conduct and experience, though never registered under the *Act*, the Respondents are experienced market participants who have been engaged in capital raising for close to seven years. The level of activity was also very high; the Respondents completed over 200 unauthorized share

transactions with New Brunswick residents, and over \$1,000,000.00 was raised from New Brunswick investors between 2004 and 2006 alone. The Respondents have admitted that Drever used part of the funds obtained from investors for personal and other expenses unrelated to either Locate or Tubtron.

[23] While the Respondents have been previously sanctioned, they have showed a lack of respect not only for this Commission and its predecessor, the Securities Branch, but also for the Court of Queen's Bench by violating numerous undertakings and the Court Orders. Drever also made several serious misrepresentations to Staff of the Commission and the Securities Branch.

[24] In terms of mitigating factors, of particular importance to the Panel in this matter is the disclosure and rescission remedy proposed by the parties. The Respondents, as part of the settlement, have agreed to offer a right of rescission and refund to all New Brunswick residents not previously offered rescission. Under the procedure set out in Part 5 of the Agreement, if the Agreement is approved by the Commission the respondents Locate and Tubtron will prepare a disclosure document and an offer of rescission and refund for each of Locate and Tubton, satisfactory to staff of the Regulatory Affairs Division of the Commission. The Agreement sets out in detail the requirements for the disclosure document and for the offer of rescission and refund.

[25] The Panel also considered, as further mitigating factors, the Respondents' co-operation with Staff in their most recent investigation, and Drever's remorse for his actions.

c. Decision on proposed sanctions

[26] After reviewing the facts as set out in the Statement and weighing the *Re Executive Marketing & Strategies Ltd.* sanctioning factors, the Panel finds that the proposed sanctions are appropriate. The permanent market bans and the substantial administrative penalties reflect the seriousness of the Respondents' repeated violations of New Brunswick securities law, and they are consistent with

sanctions previously ordered by this Commission and with decisions in other jurisdictions such as *Re Executive Marketing & Strategies Ltd.*. The nature and number of the Respondents' repeated violations require a significant regulatory response.

[27] The market bans and administrative penalties also provide a significant specific deterrent to the Respondents, and a strong general deterrent to current and prospective participants in the capital markets of New Brunswick, that violating New Brunswick's securities laws will not be tolerated. As well, New Brunswick's investors and capital markets are protected by the permanent market bans placed on the Respondents; and the Respondents have publicly acknowledged their violations and accepted the resulting consequences.

[28] Of particular importance to the Panel is the fact that the impact of the Respondents' violations upon their investors is addressed by the disclosure and rescission remedy contained in the Agreement. Though concerned with general deterrence in this case, the Panel found it important that there was a remedy aimed at the specific shareholders who are involved with the Respondents. The shareholders will be provided the disclosure required to make an informed decision about their investment. After reviewing this disclosure, investors will have an opportunity to rescind their investment and get their money back should they feel that this is not a suitable investment. With this provision, the proposed sanctions are complete in the sense that they address both the regulatory violations and the specific investors impacted by the violations.

[29] In regards to costs, the Panel acknowledges the value in having settlement proceedings go forward in this manner to resolve disputes between parties in a way that protects the public interest. This Agreement efficiently resolved this matter with respect to the Respondents, avoiding the need for a hearing. Though the actual costs of the investigation exceeded those agreed upon between the parties, the Panel finds the costs proposed in the Agreement appropriate in the circumstances.

[30] The Panel is comfortable with the terms of the Agreement and with the appropriateness of the proposed sanctions. The Panel appreciates both Staff and the Respondents' cooperation in reaching an Agreement which protects and prevents harm to both the general – investing public and capital markets – and specific interests involved.

6. CONCLUSION

[31] It is for the reasons set out above that the Panel issued the Order in this matter on 25 August 2008, in the public interest.

Dated this 29 day of October, 2008.

"original signed by"

Anne La Forest, Panel Chair

"original signed by"

Céline Trifts, Panel Member