

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

-and-

IN THE MATTER OF
**AL-TAR ENERGY CORP., ALBERTA ENERGY CORP.,
ERIC O'BRIEN, and JULIAN SYLVESTER
("Respondents")**

**REASONS FOR DECISION
Order under subsection 184(1.1) of the *Act***

Date of Order: 15 October 2007

Date of Reasons for Decision: 17 December 2007

Panel:

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

Anne La Forest, Panel Member

Céline Trifts, Panel Member

Counsel:

Mark McElman

For Staff of the New Brunswick
Securities Commission

IN THE MATTER OF

**AL-TAR ENERGY CORP., ALBERTA ENERGY CORP.,
ERIC O'BRIEN, and JULIAN SYLVESTER
("Respondents")**

REASONS FOR DECISION

1. BACKGROUND

[1] This matter involves an application by Staff ("Staff") of the New Brunswick Securities Commission ("Commission") for an order under subsection 184(1.1) of the *Securities Act* ("Act") against the Respondents Al-tar Energy Corp. ("Al-tar"), Alberta Energy Corp. ("AEC"), Eric O'Brien ("O'Brien") and Julian Sylvester ("Sylvester").

[2] Subsection 184(1.1) of the *Act* gives the Commission the power to make certain orders, after providing an opportunity to be heard, if the person:

- (a) has been convicted in Canada or elsewhere of an offence
 - i. arising from a transaction, business or course of action related to securities, or
 - ii. under the laws of the jurisdictions respecting trading in securities,
- (b) has been found by a court or tribunal of competent jurisdiction in Canada or elsewhere to have contravened or to have failed to comply with the laws of the jurisdiction respecting trading in securities,
- (c) is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person, or
- (d) has agreed with a securities regulatory authority in Canada or elsewhere to be subject to sanctions, conditions, restrictions or requirements.

Orders granted under subsection 184(1.1) are commonly referred to as

reciprocal orders.

[3] On 14 September 2007, Staff filed their application (“Application”) with the Commission, seeking a reciprocal order under paragraph 184(1.1)(c) of the *Act* against the Respondents. A Notice of Application was issued by the Commission on the same date.

[4] Staff sought a reciprocal order on the grounds that the Respondents are subject to an Order of the Ontario Securities Commission (“OSC”) which imposed sanctions on the Respondents, and that it is in the public interest that an order be issued in New Brunswick.

[5] The Notice of Application advised the Respondents of the Application and outlined the Respondent’s right to be heard by making written submissions and/or requesting a hearing before the Commission. The Notice of Application advised the Respondents to contact the Secretary of the Commission on or before 1 October 2007 if they wished to exercise their right to be heard, and that if they did not exercise their right to be heard, an order contrary to their interests could be issued without further notice.

[6] Staff filed an affidavit (“Affidavit”) of Commission investigator Ed LeBlanc (“Investigator”) sworn 14 September 2007 in support of their application. The Affidavit contained a certified copy of the OSC Order concerning the Respondents, along with copies of affidavits of OSC enforcement Staff filed in the OSC proceeding against the Respondents. The Affidavit also contains information the Investigator received through their investigation into the actions of the Respondents in New Brunswick.

[7] Staff also filed an affidavit of service (“Affidavit of Service”) on 5 October 2007, outlining their service of the Notice of Application, application and supporting affidavit on the Respondents. On 17 September 2007, Staff served AEC and Sylvester via expedited and regular mail at the address listed for

Sylvester and AEC on the Ontario Corporation Profile Report of AEC. This address was also the one utilized by the OSC for service on AEC and Sylvester. The documents were delivered on 19 September 2007.

[8] With respect to O'Brien and Al-tar, Staff obtained information from OSC investigators that O'Brien had left Ontario and that in early September he was believed to be living in New Brunswick. Staff conducted a search on Service New Brunswick's real property database and found that O'Brien was a registered owner of a property in Shediac. Staff obtained a mailing address, a post office box, which is associated with this property.

[9] Subsequent to obtaining the mailing address, Staff was advised by an OSC investigator that the Ontario investigation had revealed that credit card statements to O'Brien were being sent to this same New Brunswick mailing address.

[10] Staff attempted to serve O'Brien directly at his Shediac property on 18 September 2007. The Investigator Ed LeBlanc attended at this address but was unable to serve O'Brien; however the Investigator did speak with O'Brien's brother. Staff then sent the documents by expedited mail to this address on 19 September 2007; they were delivered on 21 September 2007.

[11] The Panel considered the Notice of Application, the Application, the Affidavit and the Affidavit of Service in reaching their decision.

2. FACTS

a. The Respondents

[12] Al-tar is an Ontario company that was incorporated by O'Brien on 21 April 2006. Al-tar purports to be involved in the development of oil and gas interests in Alberta, and markets itself as soon to be one of Canada's leading oil and gas companies.

[13] Around the time that O'Brien incorporated Al-tar, he was employed as a salesperson for Limelight Entertainment Inc., a boiler room style investment scheme which is the subject of cease trade orders in several Canadian provinces, including New Brunswick.

[14] Al-tar solicited by telephone and completed distributions of its shares to three New Brunswick residents. Neither Al-tar nor O'Brien are registered with the Commission, nor have they filed any materials with the Commission.

[15] AEC was incorporated by Sylvester on 7 November 06. There is no evidence of AEC activity in New Brunswick; however AEC is connected to Al-tar in many significant ways. Both companies share the same telephone number; they have substantially similar websites containing identical text and graphics; and their websites are hosted on the same network hosting facility.

[16] Neither AEC nor Sylvester are registered with the Commission, nor have they filed any materials with the Commission.

b. The OSC Temporary Order

[17] On 3 July 2007 the OSC issued a temporary order imposing sanctions on the Respondents. This temporary order was extended on 11 September 2007 until 18 December 2007 ("OSC Order"), when the OSC hearing is scheduled to continue.

[18] The OSC ordered that (i) all trading by Al-tar, AEC and their officers, directors, employees and/or agents in securities of Al-tar and AEC shall cease; and (ii) the Respondents cease trading in all securities.

[19] The OSC Order is based on evidence of the sale of securities in Al-tar to Ontario residents; of securities of AEC being offered for sale to the public through its website; of misrepresentations made to investors by Al-tar; of promises of shares in Al-tar "going public" and dramatic increases in share prices made to

investors; of AEC being closely related to Al-tar; and of Al-tar, AEC, O'Brien and Sylvester not being registered under the Ontario *Securities Act*. The OSC granted their order upon their finding that it was in the public interest to do so.

[20] Neither Al-tar nor AEC have filed any materials with the OSC, and none of the Respondents were registered with the OSC.

[21] The Ontario investigation is ongoing.

3. ANALYSIS AND DECISION

a. Requirements for Reciprocal Orders

[22] Staff's application was made under paragraph 184(1.1)(c) of the *Act*. Staff has requested that the Commission issue the following order:

- (a) that all trading by Al-tar Energy Corp., Alberta Energy Corp. and their officers, directors, employees and/or agents in securities of Al-tar Energy Corp. and Alberta Energy Corp. shall cease (including, without limitation, the solicitation of trades, or any acts constituting attempts or acts in furtherance of trading, in such securities);
- (b) that the Respondents shall cease trading in all securities (including, without limitation, the solicitation of trades in securities or any acts constituting attempts or acts in furtherance of trading in securities); and
- (c) that any exemptions in New Brunswick securities law do not apply to the Respondents.

[23] In order to use subsection 184(1.1) of the *Act*, two conditions must be satisfied. First, the Panel must be satisfied that the Respondents were provided an opportunity to be heard. Second, each Respondent must be a person who:

- (a) has been convicted in Canada or elsewhere of an offence
 - i. arising from a transaction, business or course of action related to securities, or
 - ii. under the laws of the jurisdictions respecting trading in securities,

- (b) has been found by a court or tribunal of competent jurisdiction in Canada or elsewhere to have contravened or to have failed to comply with the laws of the jurisdiction respecting trading in securities,
- (c) is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person, or
- (d) has agreed with a securities regulatory authority in Canada or elsewhere to be subject to sanctions, conditions, restrictions or requirements.

i. Opportunity to be Heard

[24] The Panel finds that service on the Respondents, as set out in the affidavit of service filed with the Commission on 5 October 2007, was sufficient in providing them notice of the order sought against them; of their ability to be heard prior to an order being issued in this matter; and of the consequences of not exercising their opportunity to be heard.

[25] The proceedings before the OSC demonstrate that the Respondents, particularly O'Brien, have a history of being difficult to serve. The Panel finds that Staff utilized the most current contact information available and that expedited mail constitutes sufficient service in this matter.

[26] The Notice of Application provided clear instructions to the Respondents of how they could exercise their opportunity to be heard. Despite receiving adequate notice, none of the Respondents contacted the Commission; they filed no written submissions; and they did not request a hearing. The Respondents have also not participated in the OSC proceedings.

ii. 184(1.1)(c) – Order of another securities regulator

[27] Paragraph 184(1.1)(c) provides for the issuance of an order based on the Respondents being subject to an order by another securities regulatory authority which imposes sanctions, conditions, restrictions or requirements on the

Respondents. The OSC Order currently in place against the Respondents satisfies this requirement.

[28] Being satisfied that the Respondents were provided with an opportunity to be heard and did not act upon this opportunity, and that the OSC Order satisfies paragraph 184(1.1)(c), the Panel met on 15 October 2007 to consider Staff's application for an order.

b. Public Interest

[29] Subsection 184(1.1) gives the Commission the power to make certain orders referred to in subsection 184(1). These include cease trade orders (s.184(1)(c)) and orders that exemptions in New Brunswick securities law do not apply (s.184(1)(d)). However, as set out in subsection 184(1), the Commission may issue these orders only if it is determined to be in the public interest to do so.

[30] The Alberta Securities Commission ("ASC") in their decisions *Re Sulja Bros. Building Supplies, Ltd*, 2007 ABASC 603 (at para 12) and *Re Oslund*, 2006 ABASC 1295 (at para 20), assessed the public interest aspect of the application of the reciprocal order power. The ASC found that it was not necessary to demonstrate a nexus, in the sense of evidence of actual conduct or actual harm in their province, as a prerequisite to their application of the reciprocal order power. What the legislation requires is "a compelling reason to invoke this provision".

[31] The Panel agrees with the ASC's interpretation of the public interest requirement for reciprocal orders. Prior to the Panel granting Staff's application for an order under paragraph 184(1.1)(c), they must be satisfied that there is a compelling reason to grant an order in New Brunswick.

[32] Al-tar and O'Brien, as a directing mind of Al-tar, have been directly targeting New Brunswick residents. Three New Brunswick residents have been solicited by telephone and have subsequently purchased shares in Al-tar. These solicitations were done without compliance with the registration and prospectus

requirements of the *Act*.

[33] Evidence presented in the OSC proceeding indicates that representatives soliciting purchasers for Al-tar shares have been making significant misrepresentations about Al-tar's activities and business, and that promises were made regarding substantial increases in share price and about going public.

[34] The evidence about the conduct of O'Brien and Al-tar and the resulting OSC Order, coupled with the evidence of Al-tar's activities within New Brunswick, is enough to justify the issuance of an order against these Respondents in New Brunswick. Along with the evidence of actual harm to New Brunswickers, the Panel finds that there is a real risk of future harm to New Brunswick investors, and that this risk is amply serious to constitute a compelling reason for an order against these two Respondents to be issued in New Brunswick.

[35] There is no direct evidence of AEC or Sylvester, as a directing mind of AEC, targeting New Brunswick residents. However, there is substantial evidence of a close connection between AEC and Al-tar which was serious enough for the OSC to find it in the public interest to include them in their Order.

[36] Based on Al-tar's direct activities in New Brunswick, and the obvious similarities between Al-tar and AEC's activities, the Panel finds that there is a risk that AEC and Sylvester may be planning to undertake activities similar to those of Al-tar within New Brunswick.

[37] The Panel finds that the activities of AEC and Sylvester pose a real risk of harm to New Brunswick investors. This risk is serious enough to be a compelling reason for the Panel to issue an order against AEC and Sylvester in New Brunswick.

c. Scope of New Brunswick Order

[38] Staff's application is for an order which is broader than that issued by the

OSC, on the grounds that there is no requirement in subsection 184(1.1) that the order granted by the Commission be identical to that ordered in another jurisdiction.

[39] The Commission's reciprocal order powers contained in subsection 184(1.1) are substantially similar to the ASC's reciprocal order powers in subsection 198(1.1) of the Alberta *Securities Act*. In the *Sulja Bros.* (at para 17) and *Oslund* (at para 22 and 26) decisions, the ASC confirm their position that sanctions granted under subsection 198(1.1) need not be the same as those ordered in another jurisdiction. The sanctions instead must be appropriate and conducive to the efficient administration and enforcement of securities laws. The Panel agrees with the ASC.

[40] Staff's application contains a request for an order that any exemptions in New Brunswick securities laws do not apply to the Respondents. This relief is not part of the OSC Order. Staff submitted that O'Brien's history, Al-tar's business practices, and AEC and Sylvester's close connections to Al-tar and O'Brien reveal the Respondents to be market participants who should not normally be eligible for – or granted exemptions in – New Brunswick. The Panel accepts Staff's argument and finds that this additional relief is in the public interest and appropriate to best protect New Brunswick investors.

[41] The OSC Order is a temporary order. It was extended until 18 December 2007, and with the OSC investigation ongoing it will likely be extended beyond that time.

[42] The Panel finds it in the public interest to make an order which will remain in effect for the same duration of the OSC Order, as it may be from time to time extended.

[43] The above constitute the Panel's reasons for decision for their Order issued on 15 October 2007 pursuant to paragraph 184(1.1)(c) of the *Act*.

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

"original signed by"

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

"original signed by"

Anne W. La Forest, Panel Member

"original signed by"

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