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## Luc Castiglioni, CPLC Limited Partnership and CPLC Management Group Ltd.

*Securities Act, RSBC 1996, c. 418*

### Hearing

<b>Panel</b>	Brent W. Aitken Kenneth G. Hanna Suzanne K. Wiltshire	Vice Chair Commissioner Commissioner
<b>Hearing dates</b>	November 23, 24 and 30, 2010	
<b>Submissions completed</b>	December 15, 2010	
<b>Date of Decision</b>	January 31, 2011	
<b>Appearing</b>		
Kristine Mactaggart Wright	For the Executive Director	

### Decision

#### I Introduction

- ¶ 1 This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 On January 28, 2010 the executive director issued a notice of hearing and temporary orders against Luc Castiglioni, CPLC Limited Partnership and CPLC Management Group Ltd. The orders prohibited:
- all persons from trading in securities of CPLC Limited Partnership and CPLC Management,
  - Castiglioni from acting as a director or officer of any issuer, registrant or investment fund manager and from acting as a registrant, investment fund manager or promoter,
  - all of the respondents from acting in a management or consultative capacity in connection with activities in the securities market and from engaging in investor relations, and
  - the use of the exemptions in the Act by all of the respondents.

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- ¶ 3 On February 9, 2010 the Commission extended the temporary orders until the rendering of this decision.
- ¶ 4 The notice of hearing was amended twice. In the further amended notice of hearing issued August 12, 2010, the executive director alleged that, between May 2008 and August 2009, the respondents engaged in the following misconduct, all in contravention of the Act:
- Castiglioni gave false and misleading information to the Commission or the executive director,
  - CPLC Management and Castiglioni made untrue representations about their registration status, and
  - Castiglioni perpetrated a fraud.
- ¶ 5 None of the respondents appeared or was represented by counsel at the hearing. We granted the executive director's request that we hear submissions on both liability and sanction.
- ¶ 6 CPLC Management is the general partner of CPLC Limited Partnership. We refer to CPLC Limited Partnership and CPLC Management collectively as CPLC.
- ¶ 7 Castiglioni was the sole directing mind and will of CPLC. He was the sole director and the president of CPLC Management. He alone controlled the flow of funds into and out of CPLC and he alone managed its affairs.
- ¶ 8 None of the respondents has been registered under the Act.

### **II Analysis and Findings**

#### **A Giving false and misleading information to the Commission**

- ¶ 9 The executive director alleges that Castiglioni gave false and misleading information to Commission staff, contrary to section 168.1(1)(a). That section says a person must not “. . . give information under this Act to the commission [or] the executive director . . . that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading . . . .”
- ¶ 10 In May 2009 Castiglioni met with Commission staff and told them he traded securities for CPLC through a trading account at a Swiss bank. At staff's request he later provided purported copies of statements for the account. The statements showed a balance in the account at June 30, 2009 of about €4.6 million.
- ¶ 11 In fact, according to the Swiss Financial Market Supervisory Authority, CPLC had no accounts at the Swiss bank and the balance in the account with the number

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shown on the statements was only €7,000. That Authority says the account statements appeared to be forgeries, and, based on that statement, we so find.

- ¶ 12 We find that Castiglioni gave false and misleading information to Commission staff, contrary to section 168.1(1)(a).

### **B Falsely representing registration**

- ¶ 13 The executive director alleges that CPLC Management and Castiglioni made untrue representations about their registration, contrary to section 54(1). That section says:

“54(1) A person must not represent that the person is registered under this Act unless  
(a) the representation is true, and  
(b) in making the representation, the person specifies the person’s category of registration under this Act.”

- ¶ 14 Section 168.2(1) says:

“168.2(1) If a person, other than an individual, contravenes a provision of this Act . . . an employee, officer, director or agent of the person who authorizes, permits or acquiesces in the contravention . . . also contravenes the provision . . . .

- ¶ 15 Castiglioni caused CPLC to send documents to investors that he prepared or instructed others to prepare. Those documents stated that CPLC Management and Castiglioni were registered with the Commission. They were not.
- ¶ 16 The prohibition in section 54(1) relates only to the registration status of the person making the representation. We find that CPLC Management made an untrue representation that it was registered under the Act, contrary to section 54(1). We find that Castiglioni authorized CPLC Management’s making of that untrue representation, and therefore also contravened section 54(1) through the operation of section 168.2(1).

### **C Fraud**

- ¶ 17 The notice of hearing alleges that Castiglioni engaged in transactions, or a series of transactions, that perpetrated a fraud, contrary to section 57(b) of the Act.
- ¶ 18 Section 57(b) says:

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“57 A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct

... .

(b) perpetrates a fraud on any person.”

¶ 19 Section 57(b) was considered by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7. The Court said:

29 Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.

¶ 20 The Court cited the elements of fraud from *R. v Théroux*, [1993] 2 SCR 5 (at p. 20):

. . . the actus reus of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim’s pecuniary interests at risk.

Correspondingly, the mens rea of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim’s pecuniary interests are put at risk).

¶ 21 The evidence provides clear and convincing proof that Castiglioni committed what *Théroux* describes as a “prohibited act”, that it caused deprivation, and that he had subjective knowledge of both his prohibited act and its deprivation.

¶ 22 Castiglioni used CPLC to raise \$8.2 million from more than 60 investors, mostly through the sale of units in CPLC Limited Partnership. The executive director bases the fraud allegation on the circumstances of six investors who invested \$1.3 million.

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- ¶ 23 Castiglioni falsely held out CPLC Limited Partnership to investors as an investment fund. He prepared, or caused to be prepared, the documents related to the securities issued and gave them to investors. The documents contained misrepresentations, including:
- CPLC Management was registered as a portfolio manager under the Act and that Castiglioni was registered as an adviser
  - funds given to CPLC were to be invested in CPLC-managed investment funds, which would in turn invest in publicly-traded securities.
- ¶ 24 Castiglioni prepared false account statements and sent them to investors.
- ¶ 25 Castiglioni did not use the investors' funds in the manner he told investors the funds would be used. Commission staff traced the \$1.3 million he took from the six investors:
- he kept \$740,000 for himself
  - \$100,000 went to a company his wife directed
  - \$186,000 went to credit card companies (name of accounts unknown)
  - \$91,000 went to other investors
  - the remaining \$183,000 went for purposes not related to investing, including lawyers' fees and payments to collection agencies.
- ¶ 26 In other words, all of the \$1.3 million the investors put into CPLC was spent on things other than the purposes to which Castiglioni told investors their money would be put.
- ¶ 27 Castiglioni created CPLC. He alone controlled the flow of the investor funds. He knew he was distributing investor funds to himself, his family members, and others. He knew this is not what he told investors would happen to their money.
- ¶ 28 We find that Castiglioni committed prohibited acts, that those acts would result, not merely in the investors' pecuniary interests being put at risk, but in their actual deprivation, and that he had subjective knowledge of the prohibited acts, and the deprivation.
- ¶ 29 We find that Castiglioni perpetrated a fraud on the six investors, and in so doing contravened section 57(b).

### **D Conduct contrary to the public interest**

- ¶ 30 The executive director alleges that all of the respondents' conduct as set out in the notice of hearing was contrary to the public interest.

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¶ 31 We have found that Castiglioni and CPLC Management contravened the Act. That conduct is also contrary to the public interest, although their contraventions of the Act alone provide a sufficient basis for the orders we are making.

¶ 32 The notice of hearing contains no allegations that CPLC Limited Partnership contravened the Act. However, the partnership was the primary instrument through which Castiglioni perpetrated his fraud. It actively participated in the fraud through its distribution of securities integral to the fraud. We find that CPLC Limited Partnership's distribution of these securities was conduct contrary to the public interest.

### **E Summary of Findings**

¶ 33 We find that:

1. Castiglioni gave false and misleading information to the Commission, contrary to section 168.1(1) of the Act;
2. CPLC Management, contrary to section 54(1), and Castiglioni, by reason of section 168.2(1), made untrue representations about CPLC Management's registration status; and
3. Castiglioni perpetrated a fraud, contrary to section 57(b), when he lied to investors, and used investors' funds to enrich himself and his family members, and for other purposes.
4. CPLC Limited Partnership engaged in conduct contrary to the public interest by distributing the securities that were integral to the fraud.

### **III Sanctions**

¶ 34 The factors relevant to sanction are set forth in *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22 (see page 24).

¶ 35 Fraud is inherently serious. It strikes at the heart of market integrity. Castiglioni not only took investors' money and used it for his own purposes, he pretended to be a registrant and misled Commission staff by providing them with forged documents. This is at the high end of the range of seriousness of misconduct.

¶ 36 Castiglioni was significantly enriched. Of the \$1.3 million he took from the six investors, he kept \$740,000 for himself and gave another \$100,000 to his wife's company.

¶ 37 That investors were harmed is obvious. The six investors lost \$1.3 million.

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- ¶ 38 All of this damaged the integrity and reputation of our markets, both locally and in other jurisdictions – Alberta, the United States and Europe – where Castiglioni raised money.
- ¶ 39 There are no mitigating factors, but there are aggravating ones. Castiglioni, through CPLC, told investors that he and CPLC Management were registered under the Act. This was a lie, and a serious one. Registration is one of the key investor protection mechanisms in the Act, and a representation of registration leads investors to a degree of trust and reliance they otherwise would not have.
- ¶ 40 Castiglioni also misled Commission staff when they began to investigate his activities. His conduct went far beyond a lack of candour or a mere denial. He concocted an elaborate deception, including the use of forged bank statements, with a view to frustrating staff’s attempt to discover the truth.
- ¶ 41 Castiglioni’s presence in our markets constitutes an ongoing and serious risk to investors. Our orders are intended to address that risk permanently.
- ¶ 42 The orders we are making are intended to deter the respondents from future misconduct and to demonstrate the consequences of inappropriate conduct to other market participants. We are not making any monetary orders against CPLC – the investors petitioned CPLC into bankruptcy.
- ¶ 43 The executive director cited two fraud cases. The sanctions ordered in those cases therefore provide an appropriate foundation for the orders we are making.
- ¶ 44 Section 162 authorizes a maximum administrative penalty of \$1 million “per contravention”. The executive director proposes an administrative penalty of \$3 million, on the basis that three sections of the Act were contravened.
- ¶ 45 Section 162 allows the Commission to order administrative penalties in the public interest. A given case can result in a large number of contraventions. The Commission has said the appropriate approach is to determine the appropriate penalty under that section having regard to a respondent’s conduct as a whole in light of the public interest. (See *Manna* 2009 BCSECCOM 595.)
- ¶ 46 Here, the core wrongdoing is the fraud. In the circumstances of this case, we think an appropriate administrative penalty is an amount about three times the amount Castiglioni defrauded the six investors. We have added an additional \$2 million to the penalty in recognition of the aggravating factors.

### IV Orders

- ¶ 47 Considering it to be in the public interest, we order:

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### *Castiglioni*

1. under section 161(1)(b) of the Act, that Castiglioni cease trading permanently, and is prohibited permanently from purchasing, securities or exchange contracts;
2. under section 161(1)(d)(i) and (ii), that Castiglioni resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer, registrant, or investment fund manager;
3. under section 161(1)(d)(iii), that Castiglioni is prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter;
4. under section 161(1)(d)(iv), that Castiglioni is prohibited permanently from acting in a management or consultative capacity in connection with activities in the securities market;
5. under section 161(d)(v), that Castiglioni is prohibited permanently from engaging in investor relations activities;
6. under section 161(1)(g), that Castiglioni pay to the Commission the funds he obtained as a result of his contraventions of the Act, which we find to be not less than \$1,297,581; and
7. under section 162, that Castiglioni pay an administrative penalty of \$6 million.

### *CPLC*

8. under section 161(1)(b), that all persons cease trading permanently, and are prohibited permanently from purchasing, any securities of CPLC Limited Partnership and CPLC Management Group Ltd.;
9. under section 161(1)(b), that CPLC Limited Partnership and CPLC Management Group Ltd. cease trading in and be prohibited from purchasing any securities or exchange contracts;
10. under section 161(1)(d)(iii), that CPLC Limited Partnership and CPLC Management Group Ltd. are prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter; and
11. under section 161(d)(v), that CPLC Limited Partnership and CPLC Management Group Ltd. are prohibited permanently from engaging in investor relations activities.

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¶ 48 January 31, 2011

¶ 49 **For the Commission**

Brent W. Aitken  
Vice Chair

Kenneth G. Hanna  
Commissioner

Suzanne K. Wiltshire  
Commissioner