

January 12, 2004

IN THE MATTER OF: THE SECURITIES ACT

-and-

IN THE MATTER OF: Synergy Alliance, LLC; Synergy Alliance Two, LLC; Synergy Alliance Fourteen, LLC; Synergy Alliance Group, LLC; Synergy Capital Group, LLC; Synergy Equivest Group, LLC; Synergy Financial Corporation; Synergy Investment Corporation, LLC; Larry W. Tanner; Darin R. Knee; Billy Davis; Gerald W. Blerot and Bruce Jeffrey Stewart

**REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION**

Panel:

Chair	Mr. D. G. Murray
Board Members:	Ms. L.M. McCarthy
	Mr. R.G. McEwen

Appearances:

Ms. K.G R. Laycock)	Counsel for the Commission
Mr. Gerald W. Blerot)	On his own behalf

Background

Although numerous respondents are named in this proceeding this hearing was in connection with the allegations specifically against Gerald W. Blerot ("Blerot"). The allegations are that

Blerot traded in securities or committed acts in furtherance of a trade in Manitoba without being registered as required by the Act and without benefit of an exemption from registration.

The respondents include several corporations bearing the name "Synergy" in one variation or another, all having the same American registered head office and the securities of which were offered for sale. The remaining respondents, including Blerot, are individuals who were alleged to be trading the Synergy securities without registration.

When this matter was heard, on August 21st, 2003, all of the respondents, save Blerot, had been dealt with on the basis of a settled resolution, or in the case of Stewart, by a warning against such conduct issued on behalf of the Commission. The other individual respondents Larry W. Tanner, Darin R. Knee and Billy Davis all signed Settlement Agreements with the Commission acknowledging the conduct alleged. The Settlement Agreements included denial of access to the exemptions under the Act for a period of two years, with the exception of Davis where the period was six months. Blerot denied any breach of the Act on his part resulting in the one-day hearing.

Ms. Laycock, Commission staff counsel, called four witnesses, being Messrs. Barnabe, Hildebrand and Dann, potential investors, as well as Jan Banasiak, the senior investigator at the Commission. Blerot, who was not represented by counsel, exercised his right to cross examine staff's witnesses, but chose not to call any witnesses on his own behalf. He also opted not to testify on his own behalf and acknowledged that this would leave only the testimony of staff's witnesses and documentary evidence received at the hearing for the panel's consideration. Blerot did tender one document, being a report prepared by Commission investigator Lyle Martin (Ex. 16). He referred to this document in his argument.

After closing his case, Blerot asked the panel for the opportunity to present written argument. This request was granted. The panel received the argument of staff counsel on September 2, 2003 followed one week later by Blerot's argument along with an affidavit sworn by him on August 29, 2003.

A brief rebuttal was delivered by staff counsel on September 10, 2003.

Evidence

The evidence presented at the hearing was clear and, for the most part, unequivocal. Each of Messrs. Dann, Barnabe and Hildebrand recollected attending a meeting on February 8th, 2003 at a hotel in the City of Winnipeg. At the meeting were the individual respondents in this action including Blerot. Mr. Dann testified that he had been invited to the meeting specifically by Blerot. The three also testified that they received at the meeting an investment proposal. Each stated that, while not the main presenter, Blerot did speak at the meeting and appeared to them to be a part of the Synergy team promoting the investment. The evidence of Messrs. Dann, Barnabe and Hildebrand was quite similar. One or more of them testified that:

- Blerot, in his portion of the presentation, advised that he himself was an investor in Synergy and vouched for the other individuals at the meeting and the investment itself;

- Blerot more than once followed up on points made by the other presenters;
- Blerot distributed his business card to those in attendance with the expressed purpose of facilitating follow up contact for investment.

Mr. Hildebrand testified that after the formal presentation Blerot advised him that he had set up the February 8th meeting and arranged for the attendance of the three American presenters (Tanner, Knee and Davis).

The recollection of the three witnesses was basically uniform concerning the details of the investment scheme that was offered at the meeting. Barnabe and Dann both recalled representations that the Synergy companies sold shares to investors and pooled the funds for investment in other businesses. They all testified that they were told that the minimum investment required was \$10,000.00 and that there would be returns within two years. A chart they were shown (which was also referred to at the meeting by Blerot) showed returns on investment increased along with the amount invested. The return on \$10,000.00 was at 3 to 1 and would be higher if more were invested. Barnabe and Dann recalled the return would be realized by the repurchase of the shares by Synergy.

Mr. Barnabe testified that subsequent to the February 8th, 2003 meeting he was telephoned by Blerot and asked whether he was interested in investing in Synergy. Mr. Barnabe advised he was not interested and received no further contact from Blerot or anyone else connected to Synergy.

Mr. Hildebrand also testified that he was contacted by Blerot over the telephone sometime after the February 8th, 2003 meeting. During the conversation Blerot arranged a three-way call, adding Darin Knee. Mr. Hildebrand testified that during this three-way call the investment was explained to him again. After the call he received several documents by fax. These documents included a Subscription Agreement (Ex. 6), a registered LLC Agreement (Ex. 7) and a document titled Synergy Alliance, LLC Founding Member Buy Back Summaries (Ex. 8). The fax cover page (Ex. 5) provided instructions for completion of these documents.

The Subscription Agreement was for shares in Synergy Alliance Fourteen, LLC, one of the corporate respondents. The stated consideration was \$75,000.00 U.S. with a return ratio of 5 to 1. Blerot was noted on this document as the Founding Member for Mr. Hildebrand. The registered LLC Agreement provided for the issuance of shares and the Buy Back Summaries set out the return on investment which started at three to one for a \$10,000.00 investment and went as high as eight to one for significantly larger amounts. The documents called for the return to be realized by the repurchase of the shares by Synergy after two years. Mr. Hildebrand did not invest.

Mr. Dann testified that following the February 8th, 2003 meeting he contacted Darin Knee after which he received documents similar to those described by Mr. Hildebrand, with the exception that the shares offered were of Synergy Alliance Two, LLC and the subscription amount was \$15,000.00 U.S. with a return ratio of 3.25 to 1. Blerot, again, was noted on the documents as the Founding Member in relation to Dann. Again, the documents called for a repurchase of the shares by Synergy after two years. These documents were filed as Ex. 12.

Dann testified that he was again contacted by Blerot following receipt of the documents and asked if he was going to invest. Like the other two prospective investors, Mr. Dann declined.

Mr. Banasiak testified that in his duties at the Commission he noticed an advertisement in a periodical called The Western Producer (January 2nd, 2003 edition). It read:

"TAXES TOO HIGH? Invest in a tax free environment" (Ex. 14)

The ad included a toll free phone number. Banasiak testified that responding to this type of ad and posing as a possible investor is a standard method of operation by Commission investigators to attempt to uncover illegal investment schemes being offered to Manitobans. The Western Producer is a periodical printed in Saskatchewan but with a distribution in western Canadian jurisdictions, including Manitoba.

Banasiak testified that he dialed the telephone number in the ad and left a message. The message was left under an assumed name. He advised that some days later, on February 12th, 2003 he was telephoned by someone identifying himself as Blerot. This individual advised Banasiak that the investment contemplated the purchase of shares in a company called Synergy and that the minimum investment required was \$10,000.00, which would result in a 3 to 1 return over a two year period. He also advised that the return would increase with a larger investment to as high as 8 to 1. Banasiak further testified that the individual identifying himself as Blerot indicated that Synergy used the funds from the sale of shares to invest in other companies.

The individual then directed Banasiak to Darin Knee of Synergy and gave him his telephone number for this purpose. Banasiak testified that he called Knee at the number provided and he subsequently received a fax transmission containing subscription and buy back documents in the same form as those received by the other proposed investors. The subscription amount, as in the case of Mr. Hildebrand, was \$15,000.00 U.S. and again Blerot was identified on the documentation as the Founding Member for Banasiak. These documents were filed as Ex. 15.

Blerot did not testify to deny that he placed the ad or contacted Banasiak by telephone in response to the message that was left. However, he referred to the ad in his written argument. He suggested that as The Western Producer is a Saskatchewan based publication, an ad placed in it is outside the jurisdiction of The Manitoba Securities Commission. The merit of this submission is dealt with later in this Decision. The panel does, however, on the balance of probabilities, find that Blerot did place the ad and did make the call to Banasiak.

The decision of Blerot not to call evidence left the panel with the testimony of witnesses called by staff counsel, as well as documentary evidence, as the basis for making this decision. Blerot, as indicated, did send an affidavit along with his written argument. As the affidavit came after Blerot closed his case and as he was given the opportunity to call evidence at the hearing, the panel did not consider the contents of the affidavit in reaching its decision.

Finding

The evidence given by witnesses called by staff counsel was clear and consistent. In cross-examination Blerot attempted to have them reconsider parts of their recollection of events, but without success. The panel accepts the testimony of each of the witnesses presented by staff counsel.

The panel finds Blerot was an active member of a group of individuals who attempted to trade in the securities of several companies using variations of the name "Synergy" to residents of Manitoba and they did so, as the evidence clearly discloses, without being registered for that purpose as required by the Act. Although none of those approached bought the securities offered, the actual completion of a trade is not necessary to prove a breach of the prohibition in the Act against unregistered trading. An act or acts in furtherance of a trade are sufficient to constitute a trade under the legislation. The panel finds that in arranging for the February 8th, 2003 meeting, specifically inviting at least one of the attendees, encouraging by his words and actions the investment and in his follow up activities, Blerot committed acts in furtherance of a trade without registration. Staff counsel has made out her case.

Respondent's Arguments

In reaching this decision the panel considered the defenses raised by Blerot in his written argument. Briefly they are as follows:

1. Exemption under s.19(3).

Blerot claimed to be able to rely on the exemption from registration set out in s.19(3) of the Act which states:

"Private placement

19(3) Subject to the regulations, registration is not required in respect of a trade where the purchaser is a person, other than an individual, or a company that purchases for investment only and not with a view to resale or distribution, if the trade is in a security which has an aggregate acquisition cost to that purchaser of not less than \$97,000."

If an individual is able to rely on this exemption he will be allowed to trade in securities without registration and be subject to a reporting requirement only in the event that a trade is completed.

In support of his position Blerot relied on the single document he tendered at the hearing, being an investigation report drafted by Lyle Martin, one of the Commission's investigators (Ex. 16). Martin's report was prepared in the course of the investigation into the actions of Blerot and the other respondents. In the course of his investigation Martin attended a meeting in the City of Winnipeg, other than the meeting of February 8th, 2003, at which Blerot and the other individual respondents were present and similarly presented the Synergy investment opportunity to other prospective investors. Martin noted in his report that at that meeting the proposal was specifically for a minimum investment of \$60,000.00 U.S. Blerot argued that, at the time (February, 2003), that amount was roughly equivalent to \$99,000.00 Canadian, bringing the attempted trades within the scope of the exemption. Blerot invited the panel to accept that his

part in the Synergy activities was limited to offering securities to Manitobans at this amount and as such he didn't require registration. He offered no evidence proving that \$60,000.00 U.S. was equal at the time to a sum in excess of \$97,000.00 Canadian, however, for the reasons set out below the panel finds it unnecessary to make the calculation.

In order to accept Blerot's submission the panel would have to ignore the evidence of Messrs. Barnabe, Hildebrand, Dann and Banasiak. As indicated, the panel in fact accepts their evidence as truthful. Regardless of his activities at that particular meeting, Blerot's actions surrounding the February 8th, 2003 meeting and in the placing of the ad in The Western Producer (and follow up activities) are in breach of the Act. The investment amounts discussed at the February 8th meeting and contained in most of the subsequent subscription documentation were in amounts less than \$97,000.00 Canadian. As such, Blerot cannot rely upon the exemption.

Even if all of the solicitations by Blerot had been in amounts in keeping with the exemption it is highly unlikely that he would be able to rely upon it. In order to fall within the four corners of the exemption the purchase of securities must be for investment purposes only and not with a view to resale or distribution. The accepted oral and documentary evidence clearly shows that these investments were intended to be resold to the issuer within a two year period.

2. Lack of jurisdiction.

a) Blerot questioned the jurisdiction of the Commission to hear his case. His argument was not particularly clear on the supposed areas of lack of jurisdiction although he does suggest at one point that the powers of the Commission under The Securities Act are too broad to be constitutionally valid.

The panel rejects this position. Commission staff and the hearing panel operated in this matter within the parameters of clear authority set out in the legislation. If Blerot wishes to challenge the Commission's jurisdiction on the basis of the scope of The Securities Act he will have to do it in the Courts.

b. Blerot also argued that as The Western Producer was a Saskatchewan based publication and the toll-free telephone number in the ad was a Saskatchewan number, the Manitoba Securities Commission has no jurisdiction to proceed in connection with the advertisement.

It is not necessary for the panel to consider this defense. Whether the advertisement was, in and of itself, outside of the jurisdiction of the Commission is irrelevant. The act of soliciting by telephone the Manitoba resident who responded to these advertisements is an act in furtherance of a trade and is within the jurisdiction of the Commission.

3. Improper service

Blerot argued that he did not receive personal service of the Notice of Hearing and as such was not in attendance at the initial hearing held February 19th, 2003. At that hearing an ex parte order was made against Blerot denying him access to the exemptions under the Act. This order was

extended, again ex parte, on March 5th, 2003. Blerot contends that as he did not receive personal service, any subsequent orders of the Commission are null and void.

The panel rejects this position. Blerot personally attended a hearing on June 4th, 2003 when the denial of exemptions was extended and the hearing date set. He also attended and took part in the hearing itself on August 21st, 2003. The failure to effect personal service in the first instance is of no consequence to the final determination.

No injured party

None of the Manitoba residents approached actually purchased the securities. Blerot correctly points out that no money changed hands and none was lost. He argues that because there were no completed trades the conduct does not warrant a sanction under The Securities Act.

Neither a completed trade nor loss of money is necessary for an administrative penalty to be imposed by the panel. The Securities Act is designed to protect the public of Manitoba. In doing so, it requires that individuals seeking to sell securities be registered as such and attain the training and qualifications necessary for registration. This is intended to protect the public. Trading, or attempting to trade, in securities without registration is contrary to the public interest and is worthy of sanction.

Decision

The panel finds that Blerot took part in unregistered trading activity and should receive a sanction that is not less than that accepted by Knee and Tanner. As such it is ordered that Blerot will be denied access to the exemptions under The Securities Act for a period of two (2) years from the date of this Decision.

Costs

Significant costs are attached to the conduct of investigations and hearings under Regulation 1(2)(r). The itemized costs and disbursements prepared by staff counsel pursuant to the Regulation total \$9,469.15.

The panel considers that an order in this amount is not warranted under the circumstances. At the same time, however, it is noted that the other individual respondents in this matter acknowledged their misconduct and avoided a contested hearing. Blerot chose to require a hearing and this fact must be reflected in the order of costs. The panel fixes costs and disbursements at \$5,000.00.

January 12, 2004

"D.G. Murray"

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Chair

"L.M. McCarthy"
L.M. McCarthy
Member

"R.G. McEwen"
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Member