

**IN THE MATTER OF THE SECURITIES ACT,  
R.S.N.S. 1989, CHAPTER 418, AS AMENDED (the “Act”)**

**AND**

**IN THE MATTER OF  
KNOWLEDGE HOUSE INC. (K.H.I.)**

**AND**

**IN THE MATTER OF  
R. BLOIS COLPITTS (the “Respondent”)**

**HEARING:**           **March 23, 2006**

**PANEL:**           **H. Leslie O’Brien, Q.C. - Chairman**

**COUNSEL:**       **Mr. R. Scott Peacock - for Commission Staff**  
                          **Mr. James Douglas - for the Respondent**  
                          **Ms. Kara Beitel – for the Respondent**

**REASONS FOR DECISION**

This proceeding was commenced by Notice of Hearing (the “Notice”) dated March 21, 2006, issued by the Secretary of the Nova Scotia Securities Commission (the “Commission”) pursuant to sections 134 and 135A of the Act to consider whether it was in the public interest to approve a settlement agreement (the “Settlement Agreement”) entered into between staff of the Commission (“Staff”) and the Respondent R. Blois Colpitts (“Colpitts”). A copy of the Settlement Agreement is attached as Appendix “A” to these reasons.

At the commencement of the hearing Mr. Peacock indicated the Notice and Statement of Allegations was provided to Mr. Douglas, counsel for the Respondent, in accordance with the Commission’s General Rules of Practice and Procedure. Mr. Douglas confirmed receipt of the Notice and Statement of Allegations on behalf of the Respondent.

The hearing was open to members of the public as no motion was made to have the hearing held in camera with members of the public excluded until a decision was made to approve or not approve the Settlement Agreement.

In this decision the facts stated are those that have been agreed upon by the parties to the Settlement Agreement and found in Part III, paragraphs 5 through 8 of the Settlement Agreement as set out below. The Commission notes that they are only for the purpose of the settlement hearing and that the facts agreed to here are important to the Commission in its decision to approve or not to approve the Settlement Agreement but do not go to prove any other matter not relevant to this particular settlement hearing.

- “5. Colpitts was between the 1<sup>st</sup> day of December 1999 and the 31<sup>st</sup> day of August 2001 (the “relevant time”) a barrister and solicitor and a member of the Nova Scotia Barristers Society practicing law within Nova Scotia and was the lead director of K.H.I. Colpitts also served as chairman of K.H.I.’s audit committee.
  
6. Colpitts did during the relevant period attend meetings, was party to discussions, received correspondence and communications among insiders and persons in special relationship with K.H.I. that should have put him on notice in his role as lead director of K.H.I. to the extent that as lead director he was obligated to make more in depth inquiries beyond those he made into whether the conduct and actions of certain of the insiders group and those in special relationship to K.H.I. contravened the provisions of the Act or were contrary to the public interest.
  
7. Colpitts failed in his role as lead director of K.H.I. to uncover conduct by certain of the insiders group and persons in special relationship with K.H.I. which contravened the provisions of the Act or was contrary to the public interest. The conduct so identified by Staff and others included an arrangement amongst certain insiders, to which it is acknowledged that Colpitts was not a party, to carry out transactions in the market for K.H.I. shares that were, in Staff’s view, contrary to the public interest.
  
8. In summary, during material times Colpitts engaged in conduct contrary to the public interest by failing in his role as lead director of K.H.I. in the manner identified herein.”

Mr. Peacock and Mr. Douglas both made submissions in support of the Settlement Agreement.

Following these submissions and questions from the Commission the Commission took a short recess to consider the Settlement Agreement and the submissions.

When the hearing reconvened the Commission indicated that it was appropriate in the circumstances of the particular matter and in the public interest to approve the Settlement Agreement. The Commission gave brief oral reasons for the decision to

approve the Settlement Agreement and the sanctions in the attached order and advised that written reasons would follow.

The agreed upon sanctions against Colpitts must be assessed in light of the fact he cooperated voluntarily and fully with Staff's investigation of the matters at issue in this matter subject to his duties of privilege and confidentiality.

Pursuant to section 134 of the Act the Commission is given the power to impose sanctions where it considers it to be in the public interest to do so.

The Commission turns next to why the sanctions are appropriate and in the public interest. The Commission's mandate is to provide investors with protection from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets and, where it would not be inconsistent with an adequate level of investor protection, to foster the process of capital formation, to quote subsection 1A(1) of the Act.

Canadian courts have held that the scope of the Commission's discretion with respect to the public interest is limited only by the general purpose of the Act. In order to exercise that discretion it is not necessary to find a concurrent breach of the Act, rules or regulations. See *Re Cdn. Tire Corp.* (1987), 35 B.L.R. 56 (OSC), aff'd (1987), 35 B.L.R. 117(Ont. Div. Ct.), leave to appeal to the Ontario Court of Appeal refused (1987), 35 B.L.R. xx (note) (C.A.).

In *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* [2001] 2 SCR 132 at page 151, Iacobucci J. said the Ontario Securities Commission in exercising its public interest jurisdiction should consider "...the protection of investors and the efficiency of, and public confidence in, capital markets generally."

It is important to note that the Settlement Agreement was put forward to the Commission for approval on the basis that Colpitts failed in his role as lead director of K.H.I. and in so failing triggered the public interest jurisdiction of the Commission under section 134 of the Act.

A lead director can play an important leadership role in ensuring the board functions effectively and independently of management. A lead director must be prepared to pursue emerging problem areas in depth. In 1994 a report prepared for The Toronto Stock Exchange entitled *Where Were the Directors*, at page 41, recommended that corporations appoint a lead director when the chair of the board is a member of management. This recommendation subsequently was adopted by The Toronto Stock Exchange as a guideline and is now included in National Policy 58-201 Corporate Governance Guidelines, section 3.2.

Imposing appropriate sanctions in this matter will reflect what the Ontario Securities Commission said in *M.C.J.C. Holdings and Michael Cowpland*(2002), 25 O.S.C.B. 1133, at page 1134 (the “first Cowpland case”).

“We have a duty to consider what is in the public interest. To do that, we have to take into account what sanctions are appropriate to protect the integrity of the marketplace.... In doing this, we have to take into account circumstances that are appropriate to the particular respondents. This requires us to be satisfied that proposed sanctions are proportionately appropriate with respect to the circumstances facing the particular respondents. We should not just look at absolute values, e.g. what has been paid voluntarily in other settlements...”

Securities regulators in other Canadian jurisdictions have set out factors they consider to be relevant in determining the nature and duration of sanctions. The factors noted below were outlined in *re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743, at pages 7746 and 7747. They have been taken into consideration here in measuring the sufficiency of the sanctions in the Settlement Agreement. The factors are:

- a) the seriousness of the allegations;
- b) the respondent’s experience in the marketplace;
- c) the level of the respondent’s activity in the marketplace;
- d) whether or not there has been recognition of the seriousness of the improprieties;
- e) whether or not the sanction imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital market; and
- f) any mitigating factors.

The Commission has also taken into account the factors outlined in the first Cowpland case and listed in *re Daniel Duic* (2004), 27 O.S.C.B. 2754, at pages 2756 and 2757. They are the following:

- a) the size of any profit or loss avoided from the illegal conduct;
- b) the size of any financial sanction or voluntary payment when considered with other factors;
- c) the effect any sanction may have on the livelihood of the respondent;
- d) the restraint any sanction may have on the ability of the respondent to participate without check in the capital markets;
- e) the reputation and prestige of the respondent; and
- f) the shame or financial pain that any sanction would reasonably cost the respondent, and the remorse of the respondent.

The factors listed in *Belteco* and *Duic* were applied by the Commission in *Bruce Elliott Clarke* [2004] NSSC\*, *Steven Elliott Clarke* [2005] NSSC and in *OptionsExpress* [2005] NSSC.

The Commission emphasizes that the sanctions available to it under the Act are regulatory and they are “not remedial or punitive, but rather are preventative in nature and perspective in application” to quote LeBel J. in *Cartaway Resources Corp.* [2004] 1 SCR 672 at page 696.

Furthermore in *Cartaway Resources Corp.*, supra, at page 697, LeBel J. indicated that a securities regulator is permitted to consider general deterrence when making an order under a provision of provincial securities legislation. LeBel J. remarked: “...it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative.”

Following a review of the Settlement Agreement in light of the jurisprudence noted above the Commission considers the following factors relevant in approving the Settlement Agreement:

- a) Colpitts acknowledges, with the benefit of hindsight, that his conduct was contrary to the public interest;
- b) Colpitts’ reputation and prestige has experienced a substantial impact;
- c) Colpitts did not engage in any improper trading and was not a party to the alleged improper trading activities of the insider group and those in a special relationship with K.H.I.;
- d) Colpitts complied with all requirements under the Act, including filing all required insider trading reports, in connection with his trading in shares of K.H.I.;
- e) Colpitts will be prohibited from being, becoming or acting as an officer or a director of a reporting issuer for a period of two years;
- f) Colpitts has cooperated fully and voluntarily with Staff’s investigation;
- g) Colpitts’ admissions eliminate the need for a full hearing, and accordingly conserve the resources of the Commission and save the public considerable expense; and
- h) Colpitts has agreed to make a payment in respect of costs.

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\* Nova Scotia Securities Commission decisions are available on the Commission’s website.

In the circumstances the Settlement Agreement has been approved as being in the public interest and the order, a copy of which is attached hereto as Appendix “B”, has been issued.

DATED at Halifax, Nova Scotia, this 4th day of April, 2006.

“H. Leslie O’Brien”

H. Leslie O’Brien

Chairman

Appendix "A"

**IN THE MATTER OF THE SECURITIES ACT**

**R.S.N.S. 1989, C. 418 as amended ( "the Act" )**

**-AND-**

**IN THE MATTER OF KNOWLEDGE HOUSE INC. ( "K.H.I." )**

**-AND-**

**IN THE MATTER OF**

**R. Blois Colpitts ( "Colpitts" )**

**SETTLEMENT AGREEMENT**

**I INTRODUCTION:**

1. By Notice of Hearing dated the [date] (the "Notice of Hearing"), the Nova Scotia Securities Commission ( the "Commission" ) announced that it proposed to hold a hearing to consider whether, pursuant to section 134 and 135A of the Act, in the opinion of the Commission, it is in the public interest for the Commission to make an order approving this Settlement Agreement and giving effect to its terms and conditions.

**II JOINT SETTLEMENT RECOMMENDATION**

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceedings initiated in respect of Colpitts by the Notice of Hearing in accordance with the terms and conditions set out below. Colpitts agrees to the settlement on the basis of the facts agreed to as hereinafter provided and Colpitts consents to the making of an Order; in the form attached as Schedule "A"; on the basis of the facts set out below.
3. The parties to this agreement acknowledge and agree that the facts and conclusions set out in Part III of this Settlement Agreement herein are for the

purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to Colpitts or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceeding brought by Staff of the Commission under the Act ( subject to paragraph 13) or any civil or other proceeding which may be brought by any other person or agency. No other person or agency may raise or rely upon the terms of this Settlement Agreement or any agreement to the facts stated herein whether or not this Settlement Agreement is approved by the Commission.

### **III SETTLEMENT OF FACTS AND CONCLUSIONS**

#### **Acknowledgment**

4. Staff and Colpitts agree with the facts and conclusions set out in Part III of the Settlement Agreement. Staff acknowledge that Colpitts has voluntarily and fully cooperated with its investigation of the matters at issue in this matter subject to his duties of privilege and confidentiality.

#### **Introduction**

5. Colpitts was between the 1st day of December 1999 and the 31st day of August 2001( the “relevant time” ) a barrister and solicitor and a member of the Nova Scotia Barristers Society practicing law within Nova Scotia and was the lead director of K.H.I. Colpitts also served as chairman of K.H.I.’s audit committee.

#### **Facts**

6. Colpitts did during the relevant period attend meetings, was party to discussions, received correspondence and communications among insiders and persons in special relationship with K.H.I. that should have put him on notice in his role as lead director of K.H.I to the extent that as lead director he was obligated to make more in depth inquiries beyond those he made into whether the conduct and actions of certain of the insiders group and those in special relationship to K.H.I. contravened the provisions of the Act or were contrary to the public interest.



7. Colpitts failed in his role as lead director of K.H.I. to uncover conduct by certain of the insiders group and persons in special relationship with K.H.I. which contravened the provisions of the Act or was contrary to the public interest. The conduct so identified by Staff and others included an arrangement amongst certain insiders, to which it is acknowledged that Colpitts was not a party, to carry out transactions in the market for K.H.I. shares that were, in Staff's view, contrary to the public interest.

#### **Conduct Contrary to the Public Interest**

8. In summary, during material times Colpitts engaged in conduct contrary to the public interest by failing in his role as lead director of K.H.I. in the manner identified herein.

#### **IV POSITION OF THE RESPONDENT**

9. The Respondent admits the facts set forth in Part III herein and acknowledges, with the benefit of hindsight, that his conduct was contrary to the public interest and joins Commission Staff in making this Settlement Agreement.
10. The Respondent did not engage in the alleged improper trading and was not a party to the alleged improper trading activities of the insiders group and those in a special relationship with K.H.I.
11. The Respondent was personally an investor in K.H.I. The Respondent complied with all requirements under the Act, including filing all required insider trading reports, in connection with his trading in shares of K.H.I. The Respondent lost substantially all of his investment in K.H.I upon the demise of the company in September, 2001.

#### **V TERMS OF SETTLEMENT**

12. The terms of settlement are set forth in the order contained in Schedule "A" to this settlement agreement which is expressly incorporated herein.

## VI COMMITMENTS

13. If this Settlement Agreement is approved by the Commission, Staff will not bring any further proceedings under the Act or initiate any complaint to the Commission or request the Commission to hold a hearing or issue any other order in respect of any conduct or alleged conduct of Colpitts in relation to any of the facts set out in Part III of this Settlement Agreement or in relation to any of the allegations set out in the Notice of Hearing and/or the Statement of Allegations or in relation to any other matter arising out of, relating to or in any manner connected with Colpitts' role as a director of, shareholder of or solicitor for K.H.I.
14. If this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting Colpitts in this matter and Colpitts agrees to waive any right to a full hearing and appeal of this matter under the Act.
15. If this Settlement Agreement is approved by the Commission, the parties to this Settlement Agreement will not make any statement that is inconsistent with this Settlement Agreement.
16. If, for any reason whatsoever, this settlement is not approved by the Commission, or the Order set forth in Schedule "A" is not made by the Commission:
  - a. Each of Staff and Colpitts will be entitled to proceed to a hearing unaffected by the Settlement Agreement or the settlement negotiations;
  - b. the terms of the Settlement Agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of Staff and Colpitts or as may otherwise be required by law; and
  - c. Colpitts agrees that he will not raise in any proceeding the Settlement Agreement or the negotiations or process of approval thereof as a basis of any attack or challenge of the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.
17. If, prior to the approval of this Settlement Agreement by the Commission, there are new facts or issues of substantial concern, in the view of Staff, regarding the facts set out in Part III of this Settlement Agreement, Staff will be at liberty to withdraw from this Settlement Agreement. Notice of such intention will be provided to the Respondent in writing. In the event of such notice being given,

the provisions of paragraph 16 in this part will apply as if this Settlement Agreement had not been approved in accordance with the procedures set out herein.

### **VIII DISCLOSURE OF SETTLEMENT AGREEMENT**

18. Staff or Colpitts may refer to any part or all of this Settlement Agreement in the course of the hearing convened to consider this agreement. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all the parties to the Settlement Agreement until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.

### **IX EXECUTION OF SETTLEMENT AGREEMENT**

19. This Settlement Agreement may be signed in one or more counterparts that together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

**Dated** this 21<sup>st</sup> day of March, 2006.

**Signed in the presence of:**

“Glenn Jessome”  
\_\_\_\_\_  
( **Witness** )

**per:** “R. Blois Colpitts”  
\_\_\_\_\_  
R. Blois Colpitts

**Dated** this 21<sup>st</sup> day of March., 2006.

**Staff of the Nova Scotia Securities Commission**

**Per:** “R. Scott Peacock”  
\_\_\_\_\_  
**R. Scott Peacock, Deputy Director  
Compliance and Enforcement  
Nova Scotia Securities Commission**

**IN THE MATTER OF THE SECURITIES ACT  
R.S.N.S. 1989, CHAPTER 418, AS AMENDED (the “Act”)**

**IN THE MATTER OF  
R. Blois Colpitts (“Colpitts”)**

**ORDER  
(SECTIONS 134 and 135A)**

**WHEREAS** on the 21<sup>st</sup> day of March, 2006, the Nova Scotia Securities Commission (the “Commission”) issued a Notice of Hearing pursuant to sections 134 and 135A of the Act in respect to Colpitts;

**AND WHEREAS** Colpitts entered into a settlement agreement with Staff of the Commission (“Staff”) whereby he agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

**AND WHEREAS** Staff recommended approval of the settlement agreement;

**AND WHEREAS** Colpitts is no longer a director or officer of any reporting issuer;

**AND UPON** reviewing the settlement agreement and the Notice of Hearing, and upon hearing submissions of counsel for Staff and counsel for Colpitts;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this Order;

**IT IS HEREBY ORDERED THAT** pursuant to sections 134 and 135A of the Act:

1. the settlement agreement dated the 21<sup>st</sup> day of March 2006, a copy of which is attached, is approved;
2. Colpitts shall make a voluntary settlement payment to the Minister of Finance in the amount of Twenty-Five Thousand Dollars [\$25,000.00];
3. pursuant to section 134(1)(d)(ii) of the Act, Colpitts shall be prohibited from being, becoming or acting as an officer or a director of any reporting issuer as defined in the Act for a period of two (2) years from the date of this Order; and
4. pursuant to section 135A of the Act, Colpitts shall pay costs in connection with the joint investigation and conduct of the proceedings in the amount of Twenty-five Thousand Dollars [\$25,000.00].

**DATED** at Halifax, Nova Scotia, this                      day of March, 2006.

**NOVA SCOTIA SECURITIES COMMISSION**

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Chairman

Appendix "B"  
**IN THE MATTER OF THE SECURITIES ACT  
R.S.N.S. 1989, CHAPTER 418, AS AMENDED (the "Act")**

**IN THE MATTER OF  
R. Blois Colpitts ("Colpitts")**

**ORDER  
(SECTIONS 134 and 135A)**

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4. pursuant to section 135A of the Act, Colpitts shall pay costs in connection with the joint investigation and conduct of the proceedings in the amount of Twenty-five Thousand Dollars [\$25,000.00].

**DATED** at Halifax, Nova Scotia, this 23<sup>rd</sup> day of March, 2006.

**NOVA SCOTIA SECURITIES COMMISSION**

"H. Leslie O'Brien"

Chairman