



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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IN THE MATTER OF THOMAS JOHN FINCH

STATEMENT OF ALLEGATIONS (Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

A. OVERVIEW

1. This case involves insider trading by a key member of the deal team working on the acquisition of Liberty Health Sciences Inc. (**Liberty**) in contravention of his employer's policy on insider trading and Ontario securities law. Thomas John Finch (**Finch** or the **Respondent**) had an unfair advantage and access to material non-public information when he purchased Liberty shares repeatedly leading up to the announcement of the acquisition.

2. Insider trading is a fundamental abuse of the capital markets. Using material non-public information when purchasing shares of an acquisition target is inherently unfair to other investors and erodes public confidence in the capital markets. It is essential that individuals who come into possession of material non-public information in the course of their employment abide by insider trading policies and do not use that information for their personal financial gain.

3. Between October 15, 2020 and December 17, 2020 (the **Material Time**), Finch, the Director of Corporate Development for Cresco Labs, Inc. (**Cresco**), purchased 293,550 shares of Liberty while Cresco was in negotiation to purchase Liberty. Liberty was ultimately acquired by a competing bidder, Ayr Strategies Inc. (**Ayr**), and the deal was announced on December 22, 2020 (the **Liberty Announcement**).

4. Following the Liberty Announcement, the closing price of Liberty shares increased over 64.8% from that of the previous day and Finch's Liberty shares increased in value by 82%.

B. FACTS

Staff of the Enforcement Branch of the Ontario Securities Commission (**Enforcement Staff**) makes the following allegations of fact:

(i) Finch's Role at Cresco

5. Finch is a resident of Ontario. Finch was an employee of CannaRoyalty Corp. d/b/a Origin House (**Origin House**), which was acquired by Cresco in January 2020. Following the acquisition, Finch was the Director of Corporate Development for Cresco, a cannabis and medical marijuana company based in Chicago, Illinois. At that time, Finch's role was to identify and work on growing the Cresco business through mergers and acquisitions (**M&A**).

Insider Trading Policy

6. Cresco had an insider trading policy in effect during the September 1, 2020 to January 31, 2021 period, which applied to all employees, including employees of Origin House such as Finch. Under the section "Prohibited and Restricted Activities," the policy states:

You must not engage in transactions in any securities, whether of the Company or of any other companies, while in possession of material, non-public information regarding such company or securities, including engaging in transactions in any securities of companies with which the Company does business, or may do business, when you are in possession of material, non-public information regarding such company or securities.

7. Under the section "Material Non-Public Information" (**MNPI**) the Cresco policy provided some examples of MNPI, which included the example "major corporate acquisitions and dispositions."

(ii) Negotiation of the Liberty Deal

8. Liberty, a medical marijuana company, was a reporting issuer in Ontario headquartered in Gainesville, Florida. Liberty was listed on the Canadian Securities Exchange (**CSE**) under the ticker symbol "LHS" and on the over-the-counter markets under the ticker symbol "LHSIF" until it was delisted on February 26, 2021 after being acquired by Ayr.

Finch's Role on the Liberty Deal

9. As of October 15, 2020, Finch was aware that Cresco had proposed to acquire Liberty. Finch was introduced to Liberty contacts as one of the people leading work streams for Cresco M&A initiatives.

10. On October 20, 2020, Cresco signed a confidentiality and non-disclosure agreement with Liberty (the **NDA**), which provided among other things, that Cresco and its employees could not use confidential information provided by Liberty directly or indirectly for any purpose other than in connection with the proposed transaction.

11. The following day, on October 21, 2020, Finch attended a Management Presentation with Liberty and afterwards was given access to the Liberty data room and began conducting due diligence of Liberty. This due diligence included requests for information on Liberty's business, reviewing documents uploaded to the Liberty data room, preparing and reviewing financial models of Liberty, and organizing site visits of Liberty locations.

12. Finch was listed as a "key contact" on the working group list for the team assigned to work on the Liberty acquisition. He attended meetings between Cresco and Liberty to negotiate the proposed transaction, was involved in Cresco's due diligence of Liberty, and was involved in preparing and communicating Cresco's offers to purchase Liberty.

Progress of the Liberty Deal

13. As of October 27, 2020, Finch was aware that: (a) Liberty and Cresco were discussing a 100% change of control premium on their share price, and (b) that Liberty wanted to have the acquisition completed by the end of 2020.

14. As of November 23, 2020, Finch was aware that a competitor was also bidding on Liberty and would likely be making an offer that day. On November 26, 2020, Cresco prepared and sent a Letter of Intent (**LOI**) to Liberty's agent. The LOI proposed a purchase price of CDN\$0.80 per share.

15. As of November 29, 2020, Finch was aware that Liberty sent back Cresco's LOI with comments, that Liberty was negotiating with two "very serious parties" and had terminated discussions with other parties, and that Liberty expected a purchase price between CDN\$0.80-\$1.00 per share.

16. Finch sent a second revised LOI to Liberty on Cresco's behalf on December 2, 2020. That evening, Finch spoke with Liberty's agent and was advised that there would be two competing offers and both offers were going to be presented to the Liberty Board of Directors the next day. As of December 3, 2020, Finch was aware that Ayr was the second bidder and that they had submitted an offer of CDN\$0.90 per share.

17. On December 3, 2020, Cresco communicated a revised LOI offer to Liberty's agent.

18. On December 4, 2020, Cresco sent a further revised LOI to Liberty with an offered purchase price of CDN\$0.90 per share. Earlier that day, Cresco became aware that Ayr had revised its offer to CDN\$0.925 per share. Cresco also received a message from Liberty indicating that Liberty had likely entered into exclusivity with Ayr.

19. On December 14, 2020, Cresco sent a further revised LOI to Liberty with an offered purchase price of CDN\$1.00 per share. The next day, Cresco received further communications indicating that Liberty had likely entered into exclusivity with Ayr.

Liberty Announcement

20. On December 22, 2020, Liberty and Ayr announced that they had entered into a definitive arrangement agreement pursuant to which Ayr would acquire all the issued and outstanding shares of Liberty in an all-share transaction for a total consideration of approximately \$372 million (or US\$290 million) on a fully-diluted basis.

(iii) Insider Trading of Liberty Shares

21. On May 7, 2020, Finch opened a new brokerage account at Interactive Brokers. Finch listed his occupation as self-employed as a management analyst, despite being an employee of Origin House and the Director of Corporate Development for Cresco.

22. Between November 2, 2020 and December 17, 2020, Finch purchased Liberty shares on eleven different days, splitting the purchases between his new account at Interactive Brokers and an existing account at Questrade, for a total of 293,550 shares:

	Trade Date	Broker	Shares Purchased	Purchase Amount
1.	November 2, 2020	Interactive Brokers	20,000	\$9,153
2.	November 5, 2020	Interactive Brokers	20,000	\$9,051
3.	November 9, 2020	Interactive Brokers	40,000	\$20,511
4.	November 23, 2020	Interactive Brokers	30,000	\$13,627
5.	November 24, 2020	Questrade	20,000	\$9,010
6.	December 2, 2020	Interactive Brokers	5,000	\$2,514
7.	December 7, 2020	Interactive Brokers	20,000	\$10,257
8.	December 7, 2020	Questrade	20,000	\$10,210
9.	December 8, 2020	Questrade	20,000	\$10,210
10.	December 9, 2020	Interactive Brokers	40,000	\$19,609
11.	December 9, 2020	Questrade	13,550	\$6,931
12.	December 11, 2020	Interactive Brokers	25,000	\$12,067
13.	December 17, 2020	Interactive Brokers	20,000	\$10,257
Total			293,550	\$143,406

23. Finch admitted that the information that he learned about Liberty during the course of negotiating the Liberty deal formed at least part of his decision to purchase Liberty shares.

24. As of the date of the Liberty Announcement, Finch's shares had risen in value by 82% and he had an expected profit of \$117,854 (based on the closing price as of December 22, 2020). After the Liberty deal was concluded, Finch's Liberty shares were converted into 10,810 Ayr shares.

C. BREACHES OF ONTARIO SECURITIES LAW

25. Enforcement Staff alleges that Finch, while in a special relationship with an issuer, purchased or sold securities of the issuer with the knowledge of a material fact or a material change with respect to the issuer that had not been generally disclosed, contrary to subsection 76(1) of the *Securities Act*, RSO 1990, c S.5, as amended (the **Act**).

D. ORDERS SOUGHT

26. Enforcement Staff requests that the Capital Markets Tribunal (the **Tribunal**) make an order pursuant to subsection 127(1) and 127.1 of the Act against the Respondent:

- (a) that he cease trading in any securities or derivatives permanently or for such period as is specified by the Tribunal under paragraph (2) of subsection 127(1) of the Act;
- (b) that he be prohibited from acquiring any securities permanently or for such period as is specified by the Tribunal under paragraph (2.1) of subsection 127(1) of the Act;
- (c) that any exemption contained in Ontario securities law not apply to him permanently or for such period as is specified by the Tribunal under paragraph (3) of subsection 127(1) of the Act;
- (d) that he be reprimanded under paragraph (6) of subsection 127(1) of the Act;
- (e) that he resign any position he may hold as a director or officer of any issuer under paragraph (7) of subsection 127(1) of the Act;
- (f) that he be prohibited from acting as a director or officer of any issuer permanently or for such period as is specified by the Tribunal under paragraph (8) of subsection 127(1) of the Act;
- (g) that he resign any position he may hold as a director or officer of any registrant under paragraph (8.1) subsection 127(1) of the Act;
- (h) that he be prohibited from acting as a director or officer of any registrant permanently or for such period as is specified by the Tribunal under paragraph (8.2) of subsection 127(1) of the Act;
- (i) that he be prohibited from becoming or acting as a registrant or promoter permanently or for such period as is specified by the Tribunal under paragraph (8.5) of subsection 127(1) of the Act;
- (j) that he pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;
- (k) that he disgorge to the Ontario Securities Commission (the **Commission**) any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

- (l) that he pay costs of the Commission investigation and hearing under section 127.1 of the Act; and
- (m) such other order as the Tribunal considers appropriate in the public interest.

DATED this 23rd day of October, 2023.

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