Ontario

Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue Queen ouest Toronto ON M5H 3S8

Citation: *Kallo (Re)*, 2024 ONCMT 29
Date: 2024-12-11
File No. 2023-12

IN THE MATTER OF
KALLO INC., JOHN CECIL AND SAMUEL PYO

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

(Subsection 127(1) and section 127.1 of the Securities Act, RSO 1990, c S.5)

Adjudicator: Tim Moseley

Hearing: In person, December 11, 2024

Appearances:

Johanna Braden Scott Azzopardi Matthew McMurray	For the Ontario Securities Commission
Alistair Crawley Katarina Wasielewski	For Kallo Inc. and John Cecil
John M. Picone Laura Cloutier	For Samuel Pyo

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.

[1] The Ontario Securities Commission alleges that Kallo Inc., along with its Chief Executive Officer, John Cecil, made statements that they reasonably ought to have known were materially false or misleading and would reasonably be expected to have a significant effect on the price or value of Kallo's securities. Making statements of that kind is contrary to s. 126.2(1) of the *Securities Act*.

[2] The Commission also alleges that Kallo's only other full-time employee at the relevant time, Samuel Pyo, engaged in improper conduct that justifies an order under s. 127 of the *Securities Act*, even though the conduct does not breach any specific provision of Ontario securities law.

[3] The Commission and the respondents have agreed to resolve those allegations, and they now seek approval of their settlement agreement. I have decided to approve that agreement and to order the sanctions and costs to which the parties have agreed.

[4] The factual background is set out in detail in the settlement agreement, but I will summarize it here.

[5] Kallo is a corporation with its head office in Ontario. It trades on over-the-counter markets in the United States of America.

[6] In late 2020, Kallo filed initial reports disclosing that it had agreed with five African governments to provide significant upgrades to those countries' healthcare infrastructure. Altogether, the contracts were purportedly worth more than €5.9 billion.

[7] In the weeks and months following that disclosure, the trading volume and price of Kallo shares increased significantly.

[8] Months later, in March of 2021, and after Kallo issued its 2020 Annual Report, the government of Kenya (which was one of the five countries) publicly denied entering into any contracts with Kallo. Shortly after that, the United States

Securities and Exchange Commission temporarily suspended trading in shares of Kallo. Later, the government of Eswatini (another of the five countries) issued a similar denial.

[9] Despite this sequence of events, Kallo did not correct its public disclosure. In fact, it continued to issue disclosure that maintained that the contracts existed.

[10] Throughout all this time, no one at Kallo dealt directly with the five governments or representatives of those governments. Due in part to travel restrictions resulting from the pandemic, Kallo relied on the services of its own agents, about whom Kallo knew little. Kallo relied entirely on what those agents and other third-party intermediaries told Kallo about the supposed contracts.

[11] The respondents now acknowledge that there were no contracts, and the settlement agreement sets out red flags that should have caused Kallo to question at the time whether the contracts were real. For example, no draft contracts were exchanged, there were no negotiations of the very significant financial terms, and the respondents undertook little diligence about the authenticity of the contracts or about whether the contracts were realistic in light of the various countries' healthcare budgets. The settlement agreement lists many other red flags.

[12] Kallo and Mr. Cecil admit that the disclosure they made about the supposed contracts was misleading and was contrary to subsection 126.2(1) of the *Securities Act*.

[13] As for Mr. Pyo, his misconduct is much narrower. He has agreed that he moved and/or altered signatures and stamps of the notaries who notarized certain documents, and that he prepared and gave to Mr. Cecil drafts of letters, the senders of which it appeared would be African government officials.

[14] The Commission and the respondents have agreed to resolve this proceeding on terms set out in the settlement agreement and in the order I will issue today. Those terms include the following:

a. Kallo and Mr. Cecil are jointly and severally liable to pay an administrative penalty of $200,000, and costs of $50,000, and I note that $75,000 of

that $250,000 has already been paid to the Commission, with the balance due by November 14, 2025;

b. Kallo is to be subject to various permanent bans on its market participation;

c. with limited exceptions, Mr. Cecil is to be subject to ten-year restrictions on his ability to trade in securities or derivatives, or to acquire securities;

d. Mr. Cecil may not be a director or officer of an issuer or registrant for ten years, except that he is permitted to be a director or officer of an issuer, other than a registrant or reporting issuer, if the $250,000 is paid in accordance with the schedule I mentioned earlier;

e. if the remaining $175,000 is not paid within ten years, the ten-year periods I have mentioned will continue until that amount is paid;

f. with limited exceptions, Mr. Pyo is subject to four-year restrictions on his ability to trade in securities or derivatives, or to acquire securities;

g. Mr. Pyo may not be a director or officer of a reporting issuer or registrant for four years; and

h. Mr. Pyo is required to pay, and has paid before this hearing, costs of the investigation of $5,000.

[15] The misconduct here, particularly that of Kallo and Mr. Cecil, is serious. While there is no basis to conclude that their misconduct was deliberate, in my view their conduct fell far short of what is required of a company and its chief executive officer, where that company raises funds from the public. Disclosure is a cornerstone of the securities regulatory environment. A public company and its directors and officers owe it to existing and potential investors to be very careful about the public disclosure they make. This is especially true where, as here, the disclosure should be seen to be material. Kallo and Mr. Cecil did not exercise the skepticism and diligence that they should have about this material disclosure, and in the face of the many and significant red flags.

[16] Mr. Pyo acknowledges that he ought to have been more careful about the notarized documents, and that he ought not to have trusted the assertion he says Kallo’s agents made to him about the draft letters.

[17] I conducted several confidential conferences in this proceeding, working with the parties as they reached this settlement. I am presiding over this settlement approval hearing with their consent, as required by the Tribunal's rules. My role at this hearing is to determine whether the negotiated settlement falls within a range of reasonable outcomes. In deciding whether to approve settlements, this Tribunal respects the negotiation process and accords significant deference to the resolution reached by the parties. I do so in this case.

[18] This settlement reflects the seriousness of the respondents' failure to live up to the obligations that go with being a public company. Based on my discussions with Mr. Cecil and his counsel during the confidential conferences, I am confident that this experience, together with the agreed-upon sanctions, mean that it is unlikely that Mr. Cecil will pose a risk to the capital markets in the future. These sanctions will also deter others from taking on responsibilities associated with a public company, without fully meeting those responsibilities.

[19] I am also confident that the sanctions against Mr. Pyo will act as a specific deterrent to him, and a general deterrent to others involved with public companies.

[20] By settling, both Mr. Cecil and Mr. Pyo have acknowledged responsibility for their conduct, and they have helped the Tribunal and the Commission avoid the significant cost associated with a lengthy hearing. I also take into account the fact that neither Mr. Cecil nor Mr. Pyo sold Kallo shares or profited or sought to profit in any way from the misleading disclosure. Further, with respect to Mr. Pyo, he was a young and inexperienced employee, and looked to Mr. Cecil as a mentor.

[21] Finally, a comment is in order about the term of the agreement that allows Kallo and Mr. Cecil to pay 30% of the $250,000 owing up front, with the balance due in late 2025. Generally, it aligns better with the public interest for settling respondents to pay amounts in full before the Tribunal will approve the settlement. However, Kallo has no funds, and Mr. Cecil has provided a sworn statement of financial condition that indicates a limited ability to make full payment up front and that supports an exception to the general rule. I also find that, because the statement contains intimate financial information about Mr.

Cecil, the interest served by avoiding disclosure of that statement or its contents outweighs adherence to the principle that the full adjudicative record should be available to the public. I therefore order, under rule 8 of the Tribunal's *Rules of Procedure*, that the statement be kept confidential.

[22] In conclusion, I find that the proposed settlement is reasonable and in the public interest. I will issue an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 11th day of December, 2024

"*Tim Moseley*"

Tim Moseley