FCAA
Financial and
Consumer
Affairs Authority

Suite 601
1919 Saskatchewan Drive
Regina, SK
Canada S4P 4H2

IN THE MATTER OF

THE SECURITIES ACT, 1988, S.S. 1988-89, c. S-42.2

AND

IN THE MATTER OF

OCEAN INTERNATIONAL LTD
MANHATTAN CAPITAL CORP
GREEN WORLD FINANCIAL INC
JAMES LEE
JAMIE LYONS
JAMIE MARSH
ROGER WHITE

DECISION

HEARING HELD: October 11, 2013

BEFORE: Paul Robinson, Panel Chairperson
Mary Ann McFadyen
Brian Molberg
(collectively referred to as "the Panel")

APPEARANCES: Dallas Smith ("Counsel"), representing Staff of the Financial and Consumer Affairs Authority of Saskatchewan ("Staff").

No appearance by Ocean International Ltd., Manhattan Capital Corp., Green World Financial Inc., James Lee, Jamie Lyons, Jamie Marsh, Roger White or anyone on their behalf.

DECISION DATED: December 11, 2013

BACKGROUND:

In a "Statement of Allegations of Staff of the Financial and Consumer Affairs Authority of Saskatchewan" dated May 17, 2013 as amended on June 12, 2013. Staff alleged that:

Ocean International Ltd., Manhattan Capital Corp., Green World Financial Inc., James Lee, Jamie Lyons, Jamie Marsh, and Roger White (collectively, the " Respondents") individually or collectively contravened one or more of the following subsections of The Securities Act, 1988 (S.S., 1988-89 c. S-42.2) (the Act):

a. subsection 27(2)(a), acting as dealers in Saskatchewan while not registered to do so;

b. subsection 27(2)(b), acting as advisors in Saskatchewan while not registered to do so;

c. subsection 44(2), giving an oral undertaking relating to the future value of a security, with the intention of effecting a trade in that security.

The purpose of this hearing was to consider whether it is in the public interest to make the following orders:

a. pursuant to subsection 134(1)(a) of the Act, all of the exemptions in Saskatchewan securities laws do not apply to the Respondents;

b. pursuant to subsection 134(1)(d) of the Act, the Respondents shall cease trading in any securities or exchange contracts in Saskatchewan;

c. pursuant to subsection 134(1)(d.1) of the Act, the Respondents shall cease acquiring securities for and on behalf of residents of Saskatchewan;

d. pursuant to subsection 134(1)(e) of the Act, the Respondents shall cease giving advice respecting securities, trades or exchange contracts in Saskatchewan;

e. pursuant to section 135.1 of the Act, the Respondents shall pay an administrative penalty to the Financial and Consumer Affairs Authority of Saskatchewan, in the amount of $10,000; and

f. pursuant to section 161 of the Act, the Respondents shall pay the costs of or relating to the hearing of this matter in an amount that is to be taxed.

PRELIMINARY MATTERS:

Ms Smith advised and the Panel subsequently confirmed that proper notice had been given to the Respondents.

EVIDENCE PRESENTED TO THE PANEL:

Four witnesses, three investors and an investigator with the Financial and Consumer Affairs Authority of Saskatchewan ("FCAA"), presented evidence to the Panel.

Witness 1 (Investor 1), testified as follows:

1. Investor 1 advised the Panel that in or around August 2012 he received phone calls from Lee and Lyons offering to sell him call options for gold. He was referred to the website of Ocean International ("Ocean") which to him had the appearance of a legitimate operation.

2. Investor 1 verbally agreed to purchase approximately $10,000 to $12,000 of the gold options. He was then sent an email from Lyons, who held himself out as being in the Administration Department at Ocean, which indicated that a trading account had been opened in his name and that he was to remit US$ 12,050 for purchase of 10 call options that had been purportedly made on his behalf.

3. Investor 1 became suspicious and contacted the FCAA. After conducting research into Ocean, Lee and Lyons, Investigator Sandy Novak ("Novak") advised Investor 1 that Ocean appeared to be a shell company and advised Investor 1 to "stay away from Ocean". Investor 1 did not send any money to Ocean or to Lyons or Lee.

Witnesses 2 and 3 (Investors 2 and 3) testified as follows:

4. Investor 2 advised the Panel that in or around the fall of 2012 he received calls from White recommending that he purchase shares in a 'green company'. He discussed the matter with his spouse ("Investor 3") who took over most of the communications from that point.

5. Investor 3 testified that she subsequently spoke with Lee and White who offered to sell her shares in a company through a third party, Green World Financial ("Green World"). Lee and White told her that she would double her money in three months time and that she should act swiftly since the price was going up. She understood that Lee and White would receive a commission for the sale.

6. Investor 3 received an email dated August 21, 2012 from White who identified himself as a "SR Advisor" with Manhattan Capital Corp. ("Manhattan"). The email provided links to a number of websites, one of which was for "[redacted]", a company that she was told was about to be taken over by [redacted].

7. Investor 3 received an email dated August 24, 2012 from Green World. Attached to the email was a document labeled "Stock Purchase Agreement" and another document labeled "Banking Instructions". The Stock Purchase Agreement was an unsigned agreement between Green World and an incomplete version of Investor 2's name, for the sale of 15,000 shares in a company called [redacted] for the sum of $6,000. The Banking Instructions indicated that a total of $6,150 was to be sent to a Bank of America account in New York, NY.

8. Investors 2 and 3 became suspicious and contacted a financial advisor who advised them to contact the FCAA. They spoke with Novak who told them that the individuals they were speaking with were not registered to deal in stocks in Saskatchewan. Novak also informed Investors 2 and 3 that the address they were directed to send their money to was a house for sale in Florida.

9. Investors 2 and 3 did not purchase any shares from Manhattan, Green World, Lee or White.

Witness 4 (Novak) testified as follows:

10. Novak was the principal investigator involved in this matter. She commenced an investigation into the activities of the Respondents in or around August, 2012 after being contacted by Investor 1.

11. Novak determined that Ocean and Manhattan were likely one and the same, along with another corporate entity, [redacted] that was not named in these proceedings. Ocean and Manhattan listed the same address in Hong Kong in their contact information.

12. Novak also discovered that Ocean's and Manhattan's website content almost exactly mirrored that of a legitimate business, [redacted]. Documents that were accessible through Ocean's website appeared to be identical to those accessible through [redacted]'s website, save that Ocean's name appeared in each place on Ocean's website where [redacted] name appeared on its website. This was true throughout, except in one instance on Ocean's website where a reference to "[redacted]" remained.

13. Novak was unable to locate corporate records for Ocean or Manhattan.

14. Novak determined that Green World was incorporated in the state of Wyoming, U. S. A. and that the address listed was a virtual office. She also learned that Green World was incorporated by an individual whose business is incorporating companies for others.

15. Novak received calls from a number of individuals residing in other provinces who indicated that they had been contacted by or invested money with one or more of the Respondents. Each individual was referred to the appropriate authority in his or her province of residence to follow up with their claims.

16. Novak determined that none of the Respondents have ever been registered with the FCAA or its predecessor, the Saskatchewan Financial Services Commission. She also determined that neither Ocean nor Manhattan were registered with Hong Kong's regulatory body and that on or about September 17, 2012, Ocean and Manhattan were listed on Hong Kong's Securities and Futures Commission "alert list".

ANALYSIS OF THE EVIDENCE AND THE ALLEGATIONS OF STAFF:

Staff conceded and the Panel concurred, that the allegations against Jamie Marsh were not established. In the discussion that follows; the word "Respondents", the decision and any sanctions requested by Staff and any sanctions imposed by the Panel, do not apply to Jamie Marsh.

This matter involved attempts to sell two distinct financial instruments to Saskatchewan residents. Investor 1 was encouraged to buy gold options. The Act, at section 2(1)(ss)(xiv) defines "any item or thing not mentioned in subclauses (i) to (xv) that is a futures contract or option but not an exchange contract" as a security. Section 2(1)(s.2) of the Act defines an 'exchange contract" as follows:

> "**exchange contract**" means a futures contract or an option that:
> (i) has its performance guaranteed by a clearing agency; and
>
> (ii) is traded on an exchange pursuant to standardized terms and conditions set forth in the bylaws, rules or regulations of that exchange at a price agreed on when the futures contract or option is entered into on the exchange;

and includes any instrument or class of instruments that meets the requirements mentioned in subclauses (i) and (ii);

Staff argued that there was no evidence that the performance of the options would have been guaranteed by a clearing agency so that the options offered to the Saskatchewan investor was not an exchange contract and therefore met the definition of a security. The Panel noted that the staff's position places the onus on the respondents to call evidence to prove that the options were exchange contracts and not securities. It is the position of the Panel that the onus of proving the staff's allegations must rest with the staff and for this reason rejects the staff's argument.

Investor 1 testified that he was encouraged to visit Ocean's website. The Retail Client Agreement on the website provides that after orders are received by Ocean and the trades are due to be settled, Ocean may decide to effect settlement on their own books by crossing out trades and not effecting settlement through the market. The Panel understands this to mean that Ocean may decide that in some transactions no clearing agency would be involved. Since it was not determined when the investor submitted his order whether or not a clearing agency would be guaranteeing performance of the option contract, the Panel could reasonably have found that, the transaction was not an exchange contract and therefore met the definition of a security.

On the other hand, Ocean's website had professional looking documents apparently copied from a bona fide company. Ocean held itself out as a broker that would place orders on multiple markets. With this in mind, the Panel believes that most investors who deal in options, which the Saskatchewan investor testified he had, would reasonably be expected to have perceived that performance would have been guaranteed by a clearing agency. On this basis, the Panel could reasonably have found that the transaction was an exchange contract.

Thus the determination as to whether or not the transaction in question was a security or an exchange contract is by no means clear cut. On balance, the Panel believes that the particular facts in this case favour the determination that the transaction was an exchange contract. However in the current matter the point is somewhat moot because the remedies available for the allegations of staff are identical for securities and exchange contracts.

Investors 2 and 3 were offered shares for sale by Manhattan, Lee, White and Green World. Section 2(1)(ss)(v) identifies "share" as a security.

The panel considered each of the alleged violations of the Act:

Acting as dealers in Saskatchewan while not registered to do so, contrary to section 27(2)(a) of the Act.

Investor 1 was contacted on the phone by Ocean, through Lee who held himself out as its agent, and offered gold options for purchase. He was later sent emails by Lee and Lyons, on behalf of Ocean providing him with guidance and instructions on how to complete the purchase.

Investors 2 and 3 were contacted on behalf of Manhattan by Lee and Lyons who held themselves out as its agent and offered shares in a green company. They were subsequently contacted by the

same parties as well as Green World and given instructions and documents necessary to complete their potential purchase of shares.

The Panel concluded that when the Respondents solicited the options and/or shares for valuable consideration and took steps to further the proposed transactions by sending emails to the Saskatchewan investors, they were trading in exchange contracts and securities. The Panel heard testimony that Ocean and Manhattan held themselves out as brokerage houses on their websites and that Lee and White advised investors 2 and 3 that they expected to receive commissions on their proposed transactions. In undertaking these actions, the Panel concluded that the Respondents were engaging in the business of trading in exchange contracts and securities and in so doing were acting as dealers.

Novak testified that none of the Respondents have ever been registered with the FCAA in any capacity. The Panel concluded that the Respondents had acted as dealers in Saskatchewan while not registered to do so, contrary to section 27(2)(a) of the Act.

No evidence was presented that would have led the Panel conclude that any of the exemptions in the Act apply to the transactions in question which led the Panel to conclude that the Respondents cannot be saved by any of the registration exemptions in the Act.

Acting as advisors in Saskatchewan while not registered to do so, contrary to section 27(2)(b) of the Act.

Evidence was presented that Lee and Lyons, who held themselves out as agents for Ocean, recommended that Investor 1 invest in gold options offered by Ocean because they would be quite lucrative.

Evidence was also presented that Lee and White, who held themselves out as agents for Manhattan, recommended that Investors 2 and 3 purchase shares in [redacted]. The panel in the matter of *I.W.F. et al* determined that "making a recommendation to purchase a security" is synonymous to "giving advice to purchase a security".

Novak testified that none of the Respondents have even been registered with the FCAA in any capacity. The Panel concluded that, in making recommendations to the Saskatchewan investors to purchase gold options and/or shares, Manhattan, Ocean, Lee and White acted as advisors in Saskatchewan while not registered to do so, contrary to section 27(2)(b) of the Act.

Giving undertakings relating to the future value of a security, with the intention of effecting a trade in that security contrary to subsection 44(2) of the Act.

Evidence was presented that Lee told Investor 1 that the gold options offered through Ocean were already "in the money" and that the price of gold would increase making the options even more valuable. The Panel concluded that in making this assertion relating to the future value of an exchange contract, Lee had violated subsection 44(2) of the Act. Evidence was also presented that Lee and White advised Investors 2 and 3 that the shares being offered through Manhattan would double in value in a few months. The Panel concluded that in making these undertakings, Ocean, Manhattan, Lee and Lyons violated subsection 44(2) of the Act.

ANALYSIS OF THE SANCTIONS REQUESTED BY STAFF:

Staff requested that the Respondents be permanently prohibited from:

(i) trading in securities and exchange contracts with residents of Saskatchewan,
(ii) advising residents of Saskatchewan with respect to any securities, trades or exchange contracts,
(iii) acquiring securities for and on behalf of residents of Saskatchewan, and
(iv) using any of the exemptions in Saskatchewan securities laws to undertake these activities.

The Respondents did not respond to the Notice of Hearing and did not attend the hearing to dispute the allegations against them. The Respondents are not residents of Saskatchewan and their livelihoods do not depend on doing business in the Province. In addition, it is not certain that the names given by the individual respondents are their actual names and their whereabouts is unknown. In similar circumstances such as *Gold Vault Metals, L.L.C. et al, Seisma Oil Research L.L.C. et al,* and *I.W.F. Inc. et al,* panels have ordered permanent prohibitions against trading, advising and acquiring securities for an on behalf of residents of Saskatchewan and the Panel believes that a permanent prohibition is appropriate in this case.

Staff requested that the Panel impose an administrative penalty of $10,000 against the Respondents. Counsel argued that the conduct of the Respondents was serious and that this was not a case of an innocent infraction or a technical breach of the Act but rather a deliberate attempt to obtain money for worthless or non-existent securities. Counsel argued that the evidence suggests that the corporate websites were in all likelihood copied without permission from the website of a bona fide company, that the Respondents created fake email addresses, job titles and corporate documents and made false and misleading statements to the Saskatchewan investors.

Counsel acknowledged that there were no losses suffered by Saskatchewan investors but the Panel concluded that this was due to the prudent behavior of the investors who were contacted by the Respondents and the effective action of Authority Staff to alert other potential investors. Counsel further argued that the dishonest manner in which the Respondents attempted to obtain money from the Saskatchewan investors called for a harsh general deterrence penalty.

Counsel drew the Panel's attention to the administrative penalties imposed by the panel in *I.W.F.* and to the sanctions imposed in the settlement agreement in the matter of *Snowcastle Estates.* Counsel argued that the circumstances in the current matter were highly similar to those in *I.W.F.,* in which the panel imposed an administrative penalty of $15,000. Counsel concluded that in the current matter a lower administrative penalty than that imposed in *I.W.F.* would be appropriate since an investor in *I.W.F* had suffered a loss. In the settlement agreement in *Snowcastle Estates,* although all of the investors eventually received their money back, an administrative penalty of $10,000 was imposed for general deterrence purposes.

After reviewing the facts of each of the precedents cited and the reasoning behind Staff's request, the Panel concluded that an administrative penalty of $10,000 was appropriate.

Pursuant to section 161 of the Act, the Staff requested that the Respondents should pay the costs of and related to the hearing. The Respondents did not attend the hearing and made no attempt to respond to the Notices and emails sent to them. Their lack of co-operation resulted in the

Authority incurring greater costs than would otherwise have been the case. The Panel has determined that staffs request is appropriate and, upon a submission from the parties, will award those costs identified in section 161 of the Act and subsection 1(6) of the Appendix A of Regulation 1 that would not have been incurred but for the wrongful acts of the Respondents.

DECISION OF THE PANEL:

Based on the evidence presented, the Panel has determined it is in the public interest to order that:

1. The exemptions in Saskatchewan securities law do not apply to the Respondents.

2. The Respondents cease trading in any securities and exchange contracts with residents of Saskatchewan.

3. The Respondents cease advising residents of Saskatchewan with respect to any securities, trades or exchange contracts.

4. The Respondents cease acquiring securities for and on behalf of residents of Saskatchewan.

5. The Respondents pay an administrative penalty of $10,000.

6. The Respondents pay the costs of and related to the hearing of this matter in an amount that is to be determined by the Panel based on a submission from the parties.

Dated at Regina, Saskatchewan, December 11, 2013.

Paul Robinson, Panel Chairperson

Mary Ann McFadyen

Brian Molberg