

IN THE MATTER OF  
THE SECURITIES ACT, 1988, S.S. 1988, c. S-42.2

AND

IN THE MATTER OF  
AMINIKA INTERNATIONAL INCORPORATED  
PROVINCIAL DEVELOPMENT FUND LTD.  
MYAL WEST MARKETING LTD.  
DEAN JERSAK  
GARRY WOO  
DONALD JOHANNESSON

D E C I S I O N

Hearing Held December 12 and 13, 1991

Before: Marcel de la Gorgendiere, Q.C., Chairman  
Morley Meiklejohn, Commission Member

Appearances: James Hall representing Commission staff  
John Beckman representing Garry Woo  
1st Provincial Development Fund and  
Myal West Marketing Ltd.

Decision dated January 23rd, 1992

## DECISION

This Hearing before the Saskatchewan Securities Commission the ("Commission) was to determine whether it was in the public interest to order that:

1. the individuals named in the Notice of Hearing cease trading in any securities and commodity future contracts;
2. trading in the securities of the corporations named cease; and
3. the exemptions contained in certain sections of The Securities Act, 1988, S.S. 1988, c.S.-42.2 (the "Act") not apply to any of the individual respondents.

It was alleged that three distinct trades took place in contravention of the Act.

The first were trades in securities in Myal West Marketing Ltd. ("Myal West"), 1st Provincial Development Fund Ltd. ("1st Provincial"), Aminika International Incorporated ("Aminika") and Imperial Gold Resources Corporation ("Imperial Gold") with 592778 Saskatchewan Ltd. ("592778") of which Gary Christianson was a principal, and 594745 Saskatchewan Ltd. ("594745") of which Laverne Hoffman was a principal. It was alleged that these trades were solicited by Gary Christianson, Dean Jersak and Garry Woo.

The second trade alleged by the same individual parties named was with R & J MacDonald Contracting Limited ("R & J") of which Grant Buirds was a principal, in securities of Aminika, Myal West, Saskota Industries Inc. ("Saskota"), and Imperial Gold.

The third alleged trade by the same individuals, excluding Garry Woo, was in securities of Imperial Gold, Myal West and Saskota with a number of individuals identified as the Mudrik Group.

Evidence was advanced by a Commission employee and accepted by the Commission that at the time of all of the trades none of the individuals named were registered to trade in securities. No prospectus was filed as required under Section 58 of the Act or receipt issued for any of the companies which were alleged to have been traded. No exemption provision was advanced to justify the alleged trading except Dean Jersak's reference to the close friends and business associates exemption which for reasons stated hereafter were not accepted by the Commissioners.

The Commission does not have any difficulty arriving at its decision in regard to the allegations against Donald Johannesson who prior to the hearing signed a written acknowledgement admitting all of the allegations made in the Notice of Hearing and who appeared as a witness at the hearing confirming and providing details of the trading.

The situation of Dean Jersak was somewhat different. He was involved with Donald Johannesson in marketing a number of companies in order to raise funds so that they could continue to keep on marketing in an operation that strongly resembled, if it was not in fact, a typical boiler-room operation. He claimed to be raising funds solely from close friends and business associates in accordance with an exemption under the Act. Upon cross examination, however, sufficient facts were brought out that Mr. Jersak in the end had to admit that the definition of a close friend would not apply to all the people he contacted

when the ordinary meaning of the word as used by most individuals was applied. The Commission therefore, has no difficulty also in deciding that Dean Jersak was deliberately engaged in an enterprise that circumvented the Act in the raising of funds for companies with which he was associated.

The contested issue in the hearing was the conduct of Garry Woo. He became a director and secretary treasurer of Myal West and had contact and involvement with Johannesson and Jersak prior to the time in question. Was he a party to trades contrary to the provisions of the Act or was he, as a newcomer to the operation, merely an unwitting tool to be manipulated into raising funds by Johannesson and Jersak? One must first examine the circumstances surrounding the trades and Mr. Woo's relationship to the participants. Then one might be able to reach a conclusion as to his position in regard to the trades. Following this, one can consider the public interest and whether trading should cease in securities of the companies which he controls and order the removal of his exemptions under the Act.

Evidence from Donald Johannesson and Dean Jersak confirms that they were involved in the organization and promotion of Aminika, incorporated under the Canada Business Corporations Act and registered in Saskatchewan, and Saskota, incorporated under the Alberta Business Corporations Act, companies that were ostensibly to look for equity investment in various Saskatchewan projects. With the arrival of the Immigrant Investor Program Johannesson had another company of his, namely Quill Development Corp., change its name to 1st Provincial Development Fund Ltd. for the purpose of raising equity investment under that program. Myal West was a shell Canada Business Corporations Act company that was purchased by Aminika and had as its purpose the management of the funds to be raised by 1st Provincial. It was registered by the Saskatchewan Corporations Branch as an extra-provincial corporation.

The agreement of 1st Provincial and its manager Myal West was incorporated into an offering memorandum which had received approval from federal Department of Immigration and Saskatchewan authorities to be used as part of 1st Provincial's fund raising under the Immigrant Investor Program. The original memorandum suggested that the fund would raise money for investment in Saskota and Imperial Gold, another Saskatchewan Business Corporations Act company with which the promoters had substantial links as directors and officers. Evidence was given as to changes being made in the offering memorandum as part of the approval and marketing plan process, but no evidence was given that it was considered by the Saskatchewan Securities Commission nor would that have been required as the units would have been sold outside of Saskatchewan and in amounts above the prospectus requirement limits.

In the summer of 1990 while the promoters were involved with the promotion of their companies and negotiations with government authorities about 1st Provincial, they met Garry Woo who had discussions with them over a project that was described as a marketing scheme but was not connected to the corporations referred to above. Garry Woo did, however, learn enough about the operations of the companies to invest \$10,000 by way of a loan to Saskota in September of 1990 according to the uncontradicted evidence of Mr. Johannesson. At that time there was no discussion of Woo being involved in 1st

Provincial.

In the late fall of 1990 final approval as an immigrant investor fund was obtained by 1st Provincial. It is at this point that Aminika's 100% ownership of Myal West with its contractual right to market and be the investment manager of 1st Provincial takes on significance. It is also at this time that Johannesson and Jersak are aware that they have one of two business options to take. The first is to find a buyer for the fund for which some individuals were apparently negotiating, the second being to negotiate the services of someone who would have the capability of marketing the fund in its most logical place, Hong Kong. Mr. Bob Major who was associated with them in the sale of shares of Imperial Gold was stated to have said that he knew someone who could provide the credible marketing force for the fund and he would arrange a meeting in consideration of an interest in Myal West. The meeting took place and to Jersak and Johannesson's surprise the proposed marketer was none other than Garry Woo. Mr. Woo indicated that a friend of his, Yogi Thakore, had an uncle in Ottawa with the right connections abroad to be able to "fill the fund" as the task was referred to by a number of individuals.

The question then arises in relation to the alleged trading as to whether Mr. Woo was only involved as the potential marketer of the fund or whether he was involved in any relevant way with the raising of funds that took place on behalf of Aminika.

In January of 1991 Mr. Woo and Mr. Thakore, in return for undertakings in regard to marketing 1st Provincial, had obtained 50% of the shares of Myal West while 40% of the shares were held by Aminika. It is also clear that Mr. Woo was well aware of Johannesson's and Jersak's need for funds to maintain themselves and their companies which were the source of any operational funding for 1st Provincial in which he had an interest as a result of his ownership of Myal West shares. They had advanced part of the money for instance for expenses in Ottawa connected with 1st Provincial when Messrs. Woo and Thakore went to Ottawa to inquire from their contacts as to the potential for marketing 1st Provincial.

At the same time Messrs. Johannesson and Jersak were searching to raise funds and had meetings with the aforementioned principals that were the subject of the trading alleged, namely Gary Christianson, Laverne Hoffman and Grant Buirds. Considerable evidence was presented in regard to the meetings that finally took place in February that involved all of the people in question.

There is considerable controversy over what in fact took place at the meetings at the time that Mr. Woo was present. It is a situation in which the Commission must make a decision as to what happened in the face of contradictory evidence after having assessed the evidence of the participants, all of whom have the potential of acting merely in their own interest. While there are enough common facts that are confirmed by both sides, these facts can be interpreted in different ways. It is after a careful consideration of the evidence that the Commissioners reach their conclusion based on the balance of probabilities as to what is their finding of fact as to what happened.

The individuals who were the objects of the trading attempts were business men actually

involved in operating firms that were bona fide operating enterprises. They dealt with Johannesson and Jersak directly without the intervention of professional advisers. They had different corporate interests, but all of them could see potential developments along the lines of business in which they were interested and of benefit to the communities in which they were operating if they could have access to further investment capital. They did not want to invest large amounts to control the fund, but would see themselves profiting from specific projects of their own financed by 1st Provincial. They would want a quick return of their investment after the fund was going.

They all attended the meetings with the same intention, namely to obtain some concrete evidence that before they would invest in any operation involving 1st Provincial that they could be certain that it was possible to obtain substantial investments in the fund. They were clearly not satisfied that Johannesson and Jersak could do this. They also wanted to see those involved with the marketing of the fund and involved in its management through Myal West to see whether they would be compatible for the purpose of directing the investment of the funds when obtained. The code words that were developed by them in these discussions were a team concept and one man, one vote.

At some point in a meeting of Jersak and Buirds it became clear that direct physical presence of the marketer of the fund was essential to any investment of funds that would cover the short term operating costs of Johannesson and Jersak. Jersak then made a phone call from the meeting to Mr. Woo who was able to conveniently appear within 15 minutes. The evidence was then that Mr. Woo remained as a participant in the meeting for approximately one half hour and there is no contradiction of that fact. Mr. Woo states that all he said at the meeting was that he was a team player and had no preconceived notion as to where the fund money should be invested and that he was confident that he would be able to fill the fund very shortly and that he made no further commitments. A similar meeting occurred at approximately the same time when Messrs. Christianson and Hoffman met with Jersak and were joined by Mr. Woo who said the same things to them.

The evidence, however, of Grant Buirds, Gary Christianson and Laverne Hoffman was all to the effect that not only did Mr. Woo indicate that he was capable of marketing the fund, but that it could be done within 30 days so that they could expect to have a refund of substantially all of their investment in no later than 30 days. All of the investors agreed to leave twenty percent of their investment with Aminika for the purpose of purchasing shares of Myal West which would be controlling 1st Provincial. They all state that they would not have invested had it not been for the statements made by Mr. Woo. To them he was the key to the success of the fund.

After the meetings there is no argument that money was advanced to Aminika for the purpose of obtaining from it an interest in Myal West which had control of the fund as well as shares of Saskota and Imperial Gold in consideration of a portion of the funds being loaned by Aminika to Saskota and Imperial Gold to be repaid by those companies immediately upon receipt of investment funds by 1st Provincial. Subsequent to their investment the three principals of the investors became directors of Myal West and formed part of the much discussed team only to find themselves shortly after, ousted from Myal West by Messrs. Thakore, Woo and Jersak. That consideration is irrelevant to the decision

as to what in fact transpired at the February meetings but it was a factor that the Commissioners had to consider in weighing the credibility of the evidence of all the participants.

The Commission's conclusion, based on its assessment of the evidence and the demeanour and bearing of the witnesses and the circumstances in which they were involved is as follows. The Commission knowing that Mr. Woo:

1. had already lent money to one of the companies involved in the promotion;
2. knew full well the need for funds of Johannesson and Jersak;
3. had the potential to benefit from some of the funds raised if applied as part of the marketing endeavour;

does not think it would be reasonable to conclude that he wasn't sufficiently aware that his conduct in presenting himself to the meeting was sufficient to be an act in furtherance of a trade as defined in section 2 (1)(vv) of the Act. The Commission concludes further, accepting the evidence of Buirds, Christianson and Hoffman, that these individuals would never have invested the funds unless Mr. Woo made the representations that they say he made. They may not have been sophisticated enough to understand all of the interrelationships of the various corporations that were linked to the fund or aware of what requirements the fund would have to comply with to obtain investments. However, if Mr. Woo had not indicated that he was certain they would be able to get a substantial return on their investment within 30 days, they would never have taken the risk. The Commission feels that these and other circumstances shown surrounding the meeting lead to this being the most probable conclusion. Those representations and participation in the meetings constituted acts in furtherance of a trade and those acts were conscious and deliberate. As the representations of Mr. Woo were not written and involved investments under \$150,000 the exemptions mentioned in Section 44 of the Act are not relevant.

Mr. Woo was quite adamant that he never made any commitment in regard to the 30 day repayment of the majority of invested funds and gave a number of reasons why he could not make such a guarantee, for example, that changes were required to be made to the offering memorandum before it could be successfully marketed. If he did not make them when he knew at the time that these difficulties lay in the way, it was a material misrepresentation by omission as he must have been able to conclude that the investors whatever they were investing in wanted assurances as to the filling of the fund quickly. He states that he did advise of extensive changes required, but had he done so to that extent, it would have discouraged investment and it is unlikely in view of the evidence of the investors accepted by the Commission that it occurred.

One of the circumstances bearing on the interpretation of the facts that was considered was the question of whether Mr. Woo would have had any interest in marketing anything other than 1st Provincial as a result of his interest in Myal West. There certainly was evidence by Johannesson and Jersak as well as the investors that the entire operation was being put forward as a package. Aminika in January controlled Myal West which controlled 1st Provincial and Johannesson and Jersak held out that they had substantial control of Saskota and Imperial Gold, the latter two companies being the suggested worthy recipients of

development funds when raised by 1st Provincial. Options on their shares were given to investors in consideration of their investment in Myal West through payment to Aminika. By the 26th of January it was clear from the minutes of Myal West and Aminika that Mr. Woo and Mr. Thakore were interested as shareholders in Myal West and 1st Provincial. The question was whether at that time they had an interest in the other corporations.

Minutes of a meeting of Myal West were produced as Exhibits CS-3 which originally had been produced as Exhibit P-10 in the Examination of Dean Jersak as having been provided by him and an identical copy was provided Commission staff by Bob Major. The minutes stated in part, "the Chairman further advised the meeting that in consideration of the issuance of shares and options to Garry Woo and Yogi Thakore in Myal West Marketing, Saskota Industries Inc. and Imperial Gold Resources Corporation that Garry Woo and Yogi Thakore agreed that a minimum of 15% of the funds raised by 1st Provincial Development Fund would be invested in Saskota Industries Inc. and a minimum of 15% of the funds raised by 1st Provincial Development Limited would be invested in Imperial Gold Resources Corporation provided that Saskota Industries Inc. and Imperial Gold Resources Corporation offer financial returns equivalent to other investment opportunities in Canada". The same minutes also grant Messrs. Woo and Thakore options to purchase shares of Imperial Gold and Saskota. Attached to the minutes is an addendum which states "the following parties by the signatures hereto acknowledge that the above mentioned minutes accurately represent the agreement reached between Myal West Marketing Ltd., Saskota Industries Inc., Imperial Gold Resources Corporation, Garry Woo, Yogi Thakore and Bob Major. These minutes will be construed as a contract by the parties hereto", and among the signators is Garry Woo. That Exhibit also appeared under Tab 11 in the agreed exhibits filed as CS-1.

According to the evidence in the cross examination of Mr. Woo, after he had had an opportunity to examine the second page of CS-3 and Tab 11 that the contract attached was not, in his recollection, part of the Myal West meeting, but rather a copy of the minutes of a meeting of the same date of Aminika International Incorporated which was filed as R-5 which had come into his possession when he had obtained documents that were held by Myal West after he came into control of that company pursuant to court action. Mr. Woo acknowledged that there was probably more than one copy of the minutes circulating and that he came into possession of the minutes prior to his executing the agreement which he states was attached to the Aminika minutes of January 26th. It was pointed out by Mr. Hall in the cross examination of Mr. Woo, that the fourth page in dispute makes reference to an agreement reached between Myal West Marketing, Saskota and Imperial Gold, Garry Woo, et al and it would make more sense to attach that to the minutes of the Myal West Marketing Ltd. (CS-3) While Mr. Woo denied that conclusion, it seems to be a more probable conclusion because the Aminika meeting had only to do with the transfer of the shares Aminika held in 1st Provincial to Myal West and the allocation of shares in Myal West to Messrs. Woo and Thakore. The other companies were not involved or mentioned and there would be no reason for them to be mentioned as part of the Aminika meetings.

Even, however, if they were attached to the Aminika meeting minutes with everyone's consent, it is further indication that Mr. Woo was aware of agreements involving Imperial

and Saskota as all are listed as signators to the addendum to the minutes and the addendum makes reference to the various companies. He was likely aware then that he had an interest or a potential interest in those companies. It supports the contention of the witnesses who were investors as well as that of Jersak and Johanneson that the entire melange of investments was being sold to them one way or another so as to give them right to participate in the control of 1st Provincial and the projects it would invest in and that Mr. Woo made the representations that he did in order to get them to invest in the enterprise.

The Chairman, during final argument at the hearing, raised the question of counsel as to the nature of conduct that would constitute an act, directly or indirectly, in furtherance of a trade, as "trade" is defined in Section 2(1)(vv)(v). Depending on which view of the evidence of the participation of Mr. Woo in the disputed meetings, the elements of "indirect" furtherance might warrant consideration. The Commission has benefited from the invited written submissions on that point.

As stated by Mr. Woo's counsel, "the language of the section implies that any act or conduct of Mr. Woo must be done purposefully to aid or assist in the sale or disposition of the security. It is respectfully submitted that that is not the case here and accordingly Mr. Woo is not engaged in trading under the definition of the Act". Unfortunately we cannot accept counsel's opinion that the evidence heard did not show purposeful acts or conduct. Having come to the conclusion, after earnest and careful consideration, that it did, it is not necessary to delve further into the briefs on that point in spite of its interest as a point of law.

As a result of the admissions of Mr. Jersak and the evidence presented, the Commission believes that it would be in the public interest for the following order to be made, namely that Dean Jersak is prohibited from trading any securities and commodity futures and that none of the exemptions contained in the Act and Regulations apply to him for a period of 6 years.

In regard to Mr. Johanneson, who has admitted the allegations and who co-operated with the Commission staff after the investigation was started, an order is hereby made that he be prohibited from trading in any securities and commodity contracts and that none of the exemptions in the Act and Regulations apply to him for a period of 3 years.

In regard to Mr. Woo the Commission is of the opinion that he did do acts in furtherance of trades contrary to the provisions of the Act, however he was not the original instigator of the proposals and was not involved in one of the series of trades to the Mudrik Group. To the degree that he was involved, either directly or indirectly in facilitating the trades, his conduct will no doubt cause a considerable loss to the investors as a result of the unregistered distributions. The Commission orders that he be prohibited from trading in securities and commodity contracts and that none of the exemptions in the Act and Regulations apply to him for a period of 1 year.

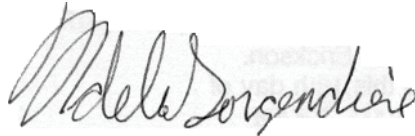
In regard to Aminika International Incorporated it is ordered that trading cease in its securities for the lifetime of all of any of its current shareholders. The Commission will



consider any application by interested creditors or shareholders to vary the order.

It is further ordered that trading cease in the securities of 1st Provincial Development Fund Ltd. and Myal West Marketing Ltd. for a period of 1 year. The Commission will be willing to hear any application in regard to the disposition of Myal West Marketing Ltd. and 1st Provincial Development Fund Ltd., providing that it determines that such a disposition would be in the public interest.

DATED at the City of Regina in the Province of Saskatchewan, this 23<sup>rd</sup> day of January, 1992.

A handwritten signature in cursive script, reading "Marcel de la Gorgendiere". The signature is written in black ink on a white background.

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Marcel de la Gorgendiere, Q.C.  
Chairman