



Saskatchewan
Financial Services
Commission

Securities Division

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

AND

IN THE MATTER OF
ALENA MARIE PASTUCH
TEAMWORX PRODUCTIONS LTD.
IDENDEGO INC.
101114386 SASKATCHEWAN LTD.
101115379 SASKATCHEWAN LTD.
CRYPTGUARD LTD.

Dear Ms. Pastuch and Mr. Udembga:

The Saskatchewan Financial Services Commission appointed Commissioner Peter Carton, Commissioner Gordon Hamilton, and Commissioner and Vice Chairperson Paul Robinson as the Hearing Panel to hear the above noted matter as provided for in the *Securities Act, 1988*.

This Letter will address the concern of adequate and proper disclosure raised by the Respondents involved in this proceeding.

Background

The disclosure of documents in this matter has a rather lengthy history. The Hearing Panel first ordered that full disclosure be provided to the Respondents in its Order dated October 25, 2010. At that time, the Respondents had retained legal counsel on an interim and limited basis. The Hearing Panel was advised that disclosure was provided on or about November 1, 2010 to the interim counsel, but thereafter complications arose between interim counsel and the Respondents that resulted in Ms. Alena Marie

Pastuch alleging that she had not received the disclosure materials. On December 13, 2010, the interim counsel withdrew as the Respondents' legal representative. The Respondents then retained a different lawyer to assist them on an interim basis. Ms. Pastuch has verbally advised the Hearing Panel that her new interim counsel only has authority to receive documents and correspondence on her behalf.

Initially, as well as subsequently, the Respondents objected to the conditions attached by the Securities Division Counsel to the disclosure materials that were sent to the first interim counsel in November, and did not review the disclosure documents at the first (and second) interim counsel's office because of the objection. This disagreement was fully presented to the Hearing Panel and, after hearing the representations of the Respondents, an Order was issued, dated February 15, 2011, that set out the conditions that would bind the Respondents' use of the disclosure materials.

After the February 15, 2011 Order, the Hearing Panel received persistent comments from the Respondents in emails that alleged that full disclosure had not been provided. These comments suggested to the Hearing Panel that the level and extent of disclosure was unsatisfactory. Before the within disclosure matter could be dealt with, the Hearing Panel dealt with another issue that appeared to be more pressing to the Respondents at the time, involving the publication of the contents of the Notice of Hearing. After receiving written submissions in March, an Order was issued on April 11, 2011 that resolved the Notice of Hearing concerns. It then invited the parties to clarify the disagreement over adequate disclosure, through its letter dated April 15, 2011. A process was established to clarify the disclosure concerns since the parties had been unable to resolve it through cooperative discussions.

An Affidavit filed by one of the investigators, Ms. Sandy Novak, dated May 10, 2011, confirmed that two of three discs containing disclosure documents were provided to the Respondents through their interim legal counsel on December 16, 2010 and February 10, 2011. The Affidavit and other written representations were unclear when the third disc of disclosure, which contained the information obtained from the Respondent's former accountant, was actually provided to the Respondents. It is obvious that it was provided sometime between February 10, 2011 and the end of May 2011.

The Recent Process

After informally raising the issue on several occasions, Ms. Pastuch formally applied to the Hearing Panel on April 29, 2011 with a request that the Securities Division Counsel provide her and the other Respondents with full and complete disclosure so that they could be prepared for the upcoming hearing scheduled to commence on July 11, 2011. As has been the previous practice, Ms. Pastuch's request was filed on her own behalf, as well as on behalf of the other entities named above: Teamworx Productions Ltd., Idendego Inc., 101114386 Saskatchewan Ltd., 101115379 Saskatchewan Ltd. and Cryptguard Ltd. Her request was in response to an April 15, 2011 written invitation from the Hearing Panel to clarify her concerns by providing detailed specifics.

Ms. Pastuch provided the hearing panel with a written submission on April 29, 2011. On May 1, 2011, Ms. Pastuch provided additional submissions by email. Mr. Sonne Udemgba, Securities Division Counsel, responded in writing on May 10, 2011. On May 11, 12 and 18, 2011, Ms. Pastuch provided further written replies and comments in response to the submissions of the Securities Division Counsel. The Hearing Panel convened a conference call on June 9, 2011, and questioned both Ms. Pastuch and Mr. Udemgba about their submissions. Both parties were unable to answer some questions fully at the time. Therefore, they were both directed to obtain the necessary clarifications by June 13, 2011, and to provide them to the Hearing Panel in writing, so that full and complete information was available to the Hearing Panel.

The Issue - Inadequate and Insufficient Disclosure

The Respondents have significant concerns arising from their belief that the Securities Division failed to provide full disclosure in advance of the hearing. These are serious allegations and go to the heart of fairness from both a procedural and a substantive perspective.

In her April 29, 2011 written submission, Ms. Pastuch outlined her concerns. She provided a list of documents, that she claimed had not been disclosed, with supporting reasons why they ought to be disclosed before the hearing. To summarize her request, her April 29, 2011 written submission outlines the focus of her concerns, which read in part:

It is impossible to prepare to defend against any accusations, incorrect information, or misinformation that may be included in such materials without the ability to thoroughly review these materials in FULL and in advance.

Outstanding disclosure items:

- all recordings, transcripts, notes or other materials from all interviews conducted by the Commission;
- all notes or other materials associated with all telephone conversations made by or to the Commission with business suppliers, agents, contractors, employees, or any other individuals.

Information Received by the Hearing Panel

Ms. Sandy Novak, an Investigator, prepared and swore an Affidavit that indicated that disclosure was provided to the Respondents on December 16, 2010 and February 10, 2011. These time frames were roughly confirmed by the Respondents. The information received from both parties suggested that the third disc of disclosed documents and materials might have been provided to the Respondents sometime in early May 2011, although the representations were somewhat inconclusive.

The Securities Division Counsel, through his written material and supporting documentation including an affidavit, has confirmed that the following materials, inter alia, have been disclosed:

- all recordings, transcripts, notes or other materials from all interviews conducted by the Commission, with the exception of internal memorandums and planning notes, and third party emails alleging a breach of the cease trade order;
- an inventory of the material obtained from the Respondent's former accountant, together with copies of all of the documents obtained from the accountant;
- three electronic data storage discs with numerous documents, recordings, and other material gathered in the investigation process;
- information and documents obtained from potential witnesses, as a part of the investigation process;

The inventory list was discussed at length during the teleconference call on June 9, 2011. As a

result of the Hearing Panel's request for confirmation whether an inventory list existed (since neither party was able to confirm its existence at the time), the Securities Division Counsel wrote and advised that an inventory list of the materials obtained from the Respondents' former accountant's office does exist and was previously disclosed to the Respondents. The written submission confirmed other information on the transfer of documents to the Respondents either through the disclosure process or through other means:

Pages 22-24 of that file refers to exhibit numbers 905288 to 905350 which is a listing of all the materials that staff collected from Frank Garretts office.... Ms. Novak informed me that the afore-mentioned exhibits are the only materials which Staff collected from Mr. Garrett's office. This is consistent with paragraph 9 of the affidavit of Sandy Novak dated May 10, 2011 which accompanied Staff submissions filed in response to Ms. Pastuch's application for additional disclosure. Page 29 of the same file contains a list of the materials including emails, attached financial projections and other attachments, which Frank Garrett emailed or provided to Staff. These materials are marked as exhibits 905412, 905412A-F and 905498. Staff informed me that exhibit number 905350 above contain some materials (55 pages) which were enclosed in an envelope. Original copies of the materials were returned to Frank Garrett. However, Staff scanned copies of these materials which include receipts, hotel room key envelopes, fax from an artist in California, Invoice from Mckercher LLP, returned receipts, restaurant receipts, shopping receipts, fax cover sheet (Alena Pastuch) etc.

Securities Division Counsel provided many additional details concerning disclosure. For example, the Hearing Panel was also advised that the recorded interview of Frank Garrett was included on the disclosure discs:

Ms. Novak informed me that apart from the above materials, Staff did not collect nor is staff in possession of any other document or record from Frank Garrett. In the recorded interview of Frank Garrett, he confirmed that there was only one box "a box of stuff" right at the beginning of the interview.

It is perhaps equally important to identify what was not disclosed, namely two specific groups of documents. The first group of documents contained internal documents *created* during the investigation process and that had not been gathered as part of the investigation.

Staff informed me that in the course of their investigation, they generated a number of internal documents

like investigation plans, internal staff memoranda, notes of in house meetings regarding progress on the investigation, proposed questions and notes prepared by investigators in anticipation of witness interviews and other internal documents which do not set out evidence gathered in the course of an investigation into this matter. Staff confirmed that these internal documents were not disclosed to Ms. Pastuch.

A second group of documents not disclosed were documents gathered in response to a third party attempt to inform the Securities Division that the Respondents were not respecting the Temporary Order to “cease trading in all securities and exchange contracts” and to “cease advising with respect to any securities, trades of exchange contracts” dated November 2, 2009. The Respondents and the Hearing Panel first became aware of this group of documents during the teleconference call on June 9, 2011. It is the Hearing Panel’s information that these emails dealt with allegations from a third party sometime after November 2009 suggesting that the Respondents acted in breach of the November 2, 2009 Temporary “Cease Trade” Order. It is important to note that there are no such allegations contained in the August 27, 2010 Notice of Hearing. If the emails were received prior to August 27, 2010, then the Securities Division obviously felt that they were unsubstantiated such that they were not included in the allegations contained in the Notice of Hearing. If they were received after the Notice of Hearing, these documents could be regarded as “after the fact” evidence.

The Respondents, as evidenced in the submissions filed by Ms. Pastuch, are in a difficult position to assist the Hearing Panel. They know what information they have, but do not know all of the information that they do not have. They do know what documents were in their former accountant’s possession, but are uncertain what the investigators took. They are very suspicious about what both the investigators and their former accountant have told them, and do not know who, if anyone, to believe. At the same time, the Hearing Panel can not and will not order the disclosure of materials that are not in the possession of the Securities Division staff, investigators or counsel. It became clear, perhaps because of the volume of the documentary materials, that Ms. Pastuch was less aware of the contents of the electronic data discs than those individuals within the Securities Division who compiled the information and transferred them to the electronic data discs. For example, her insistence that there was no inventory list was refuted, and she and the Hearing Panel were both advised that it was contained on a specific disc. In the end, it became apparent that the disagreement was over when the inventory list was created, and whether it reflected everything that was initially obtained by the Securities Division investigators. Ms.

Pastuch wrote in reply:

Sonne in his reply did NOT answer the questions at hand which was did the SFSC staff provide the "inventory list/form" REQUIRED BY law when seizing documents? That form or list would have been filled out the EXACT DAY of the seizure outlining ALL the times taken/removed from the office--either a copy is left with the part (in this case Me Garret) or a copy is sent to the Judge/JP who swore out the warrant.

THAT IS WHAT I HAVE BEEN BEGGING FOR AND ASKING FOR OVER AND OVER AGAIN!! AND WHAT THE SFSC REFUSES TO OUTRIGHT ANSWER: "WHAT IS IT THEY EXACTLY TOOK FROM MR GARRETS OFFICE -WHETHER OR NOT THEY USED IT OR ARE USING IT --- BUT WHAT WAS TAKEN --AN INVENTORY!!

Ms. Pastuch has confirmed that her interim counsel's office has received documents on February 7, 2011 and June 10, 2011 directly from her former accountant, and that she has picked them up from her counsel's office. It is unclear whether, or when, these documents had been returned to her accountant from the Securities Division investigators.

Decision Concerning Inadequate and Insufficient Disclosure

The Hearing Panel invited this Application in response to repeated concerns raised by the Respondents. The Hearing Panel must ensure that the Securities Division through its Counsel has provided the Respondents with every relevant document, recording, or other material to which the Respondents are entitled, in order to properly prepare their defence to the allegations contained in the Notice of Hearing. Relevance is considered in the broader sense by the Hearing Panel, as being relevant to the hearing itself rather than to the perspective of one side or the other side, of what might be relevant to support their respective case.

The information provided by the parties has confirmed that there is considerable confusion by the Respondents about the information that was in the possession of the Securities Division investigators and counsel, and what was in the possession of the former accountant. This confusion is understandable, as it is impossible for the Respondents to prove or otherwise demonstrate what documentary evidence was

obtained and retained by the Securities Division during its investigation. Their only source of information is what has been told to them by their former accountant and the Securities Division staff. In an application such as this, the obligation to prove whether full and sufficient disclosure has taken place rests on the Securities Division counsel. It is obvious that the Respondents do not believe that what they have been told is accurate, whether the information was received from the Securities Division staff or their former accountant. However, the Hearing Panel can only make its decision on the basis of the evidence presented to it.

The Hearing Panel does not condone any failure to produce relevant or otherwise producible documents, and at this time only the Securities Division staff and the former accountant know the full scope of the documents in their possession. However, the information and submission provided by the Securities Division counsel to the Hearing Panel were compelling, in that they were not refuted, were supported with sworn statements, and did not contain any glimpses of an attempt to withhold the necessary documents.

Ms. Pastuch's representations at the June 9, 2011 teleconference suggested that there was no inventory of documents contained in the disclosure. In her subsequent written submission, she confirmed that an inventory did exist, although she doubted whether it was complete. Securities Division Counsel has confirmed that an inventory was previously disclosed to her on one of the three electronic data discs containing disclosure documents, and this disclosure was provided as far back as February 10, 2011. During and since the teleconference on June 9, 2011, the Hearing Panel has become aware through emails and written submissions from both parties that certain documents had been sent to her current interim counsel from her former accountant, both before and after the June 9, 2011 teleconference. At this time, it is impossible without a document reconciliation process, to confirm whether some or all of these documents have been returned to her, either through the disclosure process or through her accountant.

The internal documents created by Securities Division staff during the investigation, such as internal staff memos, planning notes, and other similar documents, have no probative value since they do not contain evidence gathered in the course of the investigation. An internal document that simply reports on the progress of an investigation has no relevance to the matters in issue, as understood by the Hearing Panel. These documents may remain in the possession of the Securities Division staff without being

disclosed, subject to information arising during the course of the hearing that would conflict with this conclusion that these documents have no possible relevance.

The allegations in emails received by the investigators from a third party, who has been named and identified to the Respondents, have no relevance to these proceedings. They are not required to be produced to the Respondents.

On the basis of the representations received by the Hearing Panel, proper and full disclosure has been provided by the Securities Division legal counsel. The Hearing Panel has concluded, based on the evidence presented to it by both parties, that there is no need for any Order arising out of this Application. In reaching this conclusion, the Hearing Panel has followed the guidance of the Supreme Court of Canada in R. v. Stinchcombe, [1991] 3 S.C.R. 326 concerning disclosure: "*The Crown has a legal duty to disclose all relevant information to the defence. The fruits of the investigation which are in its possession are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done.*" The Hearing Panel is satisfied, on the basis of the evidence and information presented to it, that the Securities Division legal counsel has demonstrated that the Securities Division has complied with its legal requirement as set out in R. v. Stinchcombe, *supra*, to disclose "all relevant information" to the Respondents.

Given that much of the disclosed information has been in the Respondents' possession for several months, with the exception of a few recently delivered documents, the Hearing Panel does not anticipate any delays in conducting the hearing on the scheduled dates commencing July 11, 2011.

This is a unanimous decision of the Hearing Panel.

DATED at Regina, Saskatchewan, on June 20, 2011.



Gordon D. Hamilton
Commissioner