



Saskatchewan
Financial Services
Commission

IN THE MATTER OF
THE SECURITIES ACT, 1988, S.S. 1988-89. c.S-42.2
(the “Act”)

AND

IN THE MATTER OF
EUSTON CAPITAL CORPORATION (“Euston”)
GEORGE SCHWARTZ (“Schwartz”)

DECISION BY THE SASKATCHEWAN FINANCIAL SERVICES COMMISSION
(the “Commission”) ON RECONSIDERATION OF SANCTIONS
IMPOSED AGAINST EUSTON AND SCHWARTZ BY ORDER
OF THE COMMISSION DATED THE 9th DAY OF FEBRUARY, 2006

On the appeal of the Commission’s decision by Euston and Schwartz, the Court of Appeal upheld the decision of the Commission that neither the exemption from registration nor the exemption from the prospectus requirements imposed by the Act were available to either of Euston and Schwartz.

However the Court of Appeal found that the Commission did err by failing to provide reasons explaining its decision with respect to the sanctions imposed pursuant to sections 134 and 135.1, and allowed the appeal to that extent, with the sanctions aspect of the Commission’s decision being quashed and remitted to the Commission for reconsideration.

Notwithstanding such ruling the Court of Appeal did not interfere with the Commission’s order relative to the costs of the hearing; with such order to remain in effect.

By way of summary, the decision of the Commission relative to sanctions in so far as they affect Euston and Schwartz, as quashed by the Court of Appeal, is as follows:

- (1) Pursuant to section 134(1)(d) of the Act, trading in all securities by and of each of Euston and Schwartz do cease for a period of up to and including 10 years from the 9th day of February, 2006;
- (2) The exemptions described and provided for in section 134 (1)(a) of the Act do not apply to Euston and Schwartz for a period of 10 years from the 9th day of February, 2006;

- (3) Pursuant to section 135.1 (1) and (2) of the Act, each of Euston and Schwartz do pay an administrative penalty of \$50,000.

At the outset the Commission will deal with the matters raised in paragraph 53 of the decision of the Court of Appeal.

In arriving at a decision for the imposition of sanctions against Euston and Schwartz, the Commission considered the totality of the evidence adduced, particularly the number of Saskatchewan residents affected and the amount of money lost by them, and what should be done to protect the public and deter others.

It did not consider, under any specific head, the matters referred to in paragraph 53. By way of reconsideration, with respect the Commission views this matter as follows:

- (1)
 - (a) Lack of history of wrongdoing by Euston and Schwartz
The Commission was not aware of any history of wrongdoing, but considers this matter to be of sufficient seriousness to be considered in isolation, and not whether this was a first time offence.
 - (b) Co-operation with the Commission's investigation
The Commission is not aware whether there was any co-operation by Euston and Schwartz in the Commission's investigation. In any event the Commission does not consider that any effort to come clean once the investigation was commenced, is a mitigating factor in this circumstance. While it may be of small consequence the Commission does know that once the matter was set for hearing that some difficulty was experienced in arranging a hearing date satisfactory to Euston and Schwartz; in the end the Commission had to fix a preemptive date.
 - (c) Ongoing efforts by Euston and Schwartz to assist purchasers to realize some benefit
There was some evidence of an offer to trade Euston shares for shares in some pharmacy company, but these substituted shares had no more real value than the Euston shares. In an isolated case or two Euston returned the purchase price of its shares to investors. In number of those affected and the amount involved, the Commission views this gesture as insignificant.
- (2) How did the Commission assess the seriousness of the actions of Euston and Schwartz, or the significance it placed on factors such as the need to deter further activity and the urgency of protecting the public?
In view of the breach of Saskatchewan securities law, and the number of purchasers affected and the total price paid, the Commission views the actions of Euston and Schwartz to be very serious. The Commission feels that the need to deter further activity and the urgency of protecting the public are extremely significant.
- (3) The length of the cease trade order
There is no guideline in this regard. The commission feels it should be sufficiently long to protect the public for a reasonable time and that in its opinion, 10 years is reasonable.

(4) An administrative penalty of \$50,000

There is no guideline except the penalty cannot exceed \$100,000. In the circumstance we consider \$50,000 is reasonable both to penalize Euston and Schwartz and to deter others.

(5) Why the cease trade against Schwartz?

The Commission feels that in view of his non-compliance with Saskatchewan securities law, to protect the public, he should be prevented from dealing with shares in Saskatchewan in any capacity for a reasonable time.

Now, with respect, the Commission reconsiders further the sanctions as hereinafter set forth.

Euston and Schwartz sold Euston shares to some 53 Saskatchewan residents for a total price of \$220,440 at a time when no prospectus by Euston had been filed with, and receipted by, the Commission, and at a time when there was no registration of Euston and Schwartz by the Commission as dealers or salespersons, and at a time when the exemptions from the prospectus and registration requirements provided by Multilateral Instrument 45-103, were not available to them. At no time prior to such sales was there a determination made, by the seller, that the purchasers were accredited investors.

The Commission views this contravention to be serious. Saskatchewan securities law is in place to protect the public. To this end it is of paramount importance that there be total compliance with it by those subject to it. In the event of contravention, and if it is in the public interest, the Commission can prevent Euston and Schwartz from trading in securities and deprive them of certain exemptions, for as long as the Commission fairly and reasonably determines.

In addition the Commission can levy an administrative penalty to a maximum of \$100,000. Euston and Schwartz sold over \$220,000 of Euston shares to some 53 Saskatchewan investors at a time when Euston and Schwartz were not entitled in law to do so. Of lesser concern, but still a matter of some consideration, they filed with the Commission, some 13 reports of exempt distributions, which were incorrect because the purchasers listed therein were not accredited investors. They deserve to be penalized and there should be a message given to deter others from contravening Saskatchewan securities law. Accordingly the Commission is of the view that an administrative penalty of \$50,000 payable by each of Euston and Schwartz is reasonable.

After reconsideration of the said sanctions, it is the opinion of the Commission that the sanctions imposed are in the public interest, and the Commission does hereby order that:

- (1) pursuant to section 134(1)(d) of the Act trading in all securities by and of Euston and Schwartz do cease for a period up to and including 10 years from the 9th day of February, 2006; and

- (2) the exemptions described and provided for in section 134(1)(a) do not apply to each of Euston and Schwartz for a period up to and including 10 years from the 9th day of February, 2006; and
- (3) pursuant to section 135.1(1) and (2) of the Act the Commission considers it to be in the public interest that each of Euston and Schwartz pay an administrative penalty of \$50,000.

Dated the 27th day of March, 2008.

"W.F. Ready"
W. F. Ready, Q.C., Chairman

"Gwen Charman"
Gwen Charman, C.A.

"Dale Hillmer"
Dale Hillmer