



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.

REASONS FOR DECISION ON INTERIM MOTION

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*. The reasons for the hearing panel's decision were written by Mr. Gordon Hamilton.

The Submissions

On February 1, 2011, ALENA MARIE PASTUCH once again raised her concerns over the contents of the Notice of Hearing. After hearing brief oral submissions from her and Securities Division legal counsel on the issue, the panel requested that she clarify her concerns through a formal interim application if she wanted this issue reviewed, with the opportunity for both sides to put in writing their perspectives. On February 22, 2011, Ms. Pastuch formally applied to the hearing panel with a request that the Notice of Hearing published by the Securities Division of the Saskatchewan Financial Services

Commission on its public website be removed from that website. The Notice of Hearing was dated August 27, 2010 and has been accessible on the public website of the Securities Division of the Saskatchewan Financial Services Commission since at least August 30, 2010. Her application 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.

Ms. Pastuch provided the hearing panel with very lengthy submissions, both as a part of her original application and in response to the reply of the Securities Division legal counsel. Because of the length of her submissions, it is not possible to reproduce them here except by summary references. Ms. Pastuch based her application for the removal of the Notice of Hearing from the public website on the followings grounds:

1. The Notice of Hearing includes the names of third parties who have been negatively impacted by their inclusion in the public Notice;
2. The Notice of Hearing includes the amounts on deposit in specific bank accounts, including the personal bank account of Ms. Pastuch;
3. The Notice of Hearing contains allegations and information that Ms. Pastuch asserts are wrong and/or misleading:
 - Ms. Pastuch alleges that the Notice of Hearing suggested that she held herself out as having a business degree from Harvard, which she disputes;
 - Ms. Pastuch alleges that allegations concerning the operations centres are unfounded;
 - The Notice of Hearing suggests that Ms. Pastuch refused to attend to or cooperate with Securities Division investigatory staff, which Ms. Pastuch disputes;

- The Notice of Hearing contains references to the valuation of shares, which Ms. Pastuch alleges are inaccurate.

On March 7, 2011, Securities Division legal counsel confirmed his opposition to her application. He outlined the reasons why the hearing panel should dismiss her application:

“1. The Securities Act gives the Commission powers to publish its Notice of Hearing on the SFSC website. The Notice of Hearing is a public notice of a hearing that is open to the public.”

“2. It has been the long standing practice of the Securities Division of the SFSC to post Notices of current and past Hearings on the SFSC website. This is consistent with the practise of other securities regulatory authorities.”

“3. Apart from her claim that the Notice of Hearing contains defamatory/untrue statements which is intended to have a negative impact on her, a claim which staff vehemently oppose, Ms. Pastuch has failed to provide a reasonable basis for deviating from a long standing procedure of publishing Notices of hearings on the SFSC website.”

As indicated, Ms. Pastuch provided additional details in support of the initial grounds underlying her application in her response to the submission of the Securities Division legal counsel. Thereafter, the Hearing Panel met *in-camera* on April 4, 2011 and considered the written submissions presented to it.

Analysis

The investigation of individuals or corporations is, by its very nature, a very intrusive exercise – and it is specifically perceived as such by those that are alleged to have breached the *Securities Act, 1988*. Once an investigation has reached the stage where charges under the *Securities Act, 1988* are laid, there is

a clear requirement both in law and in equity that the accused parties are fully aware of the accusations against them. This will require significant details in order to ensure that the process is both proper and fair to all affected parties.

The first ground raised by Ms. Pastuch deals with the names of third parties that have been included in the Notice of Hearing. A review of the Notice of Hearing revealed that, indeed, many names of third parties were included. In some cases, they are former corporate directors, current executive officers (at the time), or others having signing authority over the bank accounts of certain corporate entities. There does not appear to be anything improper about naming these third parties, if they were willingly involved in these roles and activities at one time or another. The Notice of Hearing displayed some sensitivity to those individuals who had invested in one of the above-named companies or their products. The names of investors were redacted from the public Notice.

It is the Hearing Panel's conclusion that there is a significant difference to be made between investors and the other individuals named in the Notice of Hearing. Investors commit their financial resources to a corporation with the plan of obtaining a financial return, and nothing more. Those persons who accept executive positions or other significant roles, are seen as accepting the risk of being associated with the company for which they work or for which they have been given authorities. Similarly, those who enter into business transactions (not including investment transactions) with the individuals or corporations listed above also willingly accept the risk that their business transactions may become public knowledge someday. There would be no expectation of privacy associated with the business transactions of the nature cited in the Notice of Hearing. Investors, on the other hand, would expect that, whether they invested \$1000 or \$1 million, their name as an investor would not be published on the internet. Properly, the Notice of Hearing had investor names redacted.

The notion of the expectation of privacy raised in the first ground by Ms. Pastuch also arises in the second ground raised by her. She objected to the publication of bank account information, specifically account balances and the details of account transactions. The Hearing Panel noted that the Notice of Hearing also included bank account numbers for both personal and business accounts. Banks are regulated by the federal Personal Information Protection and Electronics Documents legislation, which governs how they are to protect the personal information of their customers. It is common knowledge

that banks may not publish or otherwise disclose bank account information to third parties, whether it is transaction histories, account balances or account numbers, without the consent of the customer. However, banks would have no basis to refuse access to otherwise confidential personal and corporate banking information when an investigation is underway pursuant to the *Securities Act, 1988*. Their compliance with the requested access arising in the course of an investigation is indeed proper and is to be supported.

The Hearing Panel shares some of the Respondent's concerns with the publication on the internet of personal and corporate banking information gained through an investigation. A review of the Notice of Hearing revealed that:

1. Personal bank account numbers, including the location of the particular branch and the particular financial institution, were published.
2. Corporate bank account numbers, including the location of the particular branch and the particular financial institution, were published.
3. Banking transactions, deposits, and snap-shot balances for both personal and corporate accounts were published.

Although the Commission has the powers pursuant to the *Securities Act, 1988* to publish Notices of Hearing, these powers are not unfettered. There must be a balance struck in the drafting and the publication of the Notice of Hearing. The public has a right to know about a public hearing and the nature of the allegations against an individual, corporation or group. The individual, corporation or group who is accused has a right to know, in as much detail as possible, the exact nature of the allegations it has to refute, in order to fully defend itself. A detailed and published Notice of Hearing is consistent with the right of Respondents to ascertain in advance the exact nature of the allegations against them, however it is not the only means that such information can be provided. Great caution must be exercised in releasing confidential information of a private nature. Innocent third parties, such as investors, should be protected from public scrutiny and injury, where possible.

This Hearing Panel can see no public purpose in publishing detailed personal and corporate

banking information on a public internet website. Nor was any justification provided by the Securities Division legal counsel to provide the Hearing Panel with any degree of comfort aside from the confirmation that the publication of a notice of hearing on the internet is standard practice by both this Securities Commission and other securities regulators across Canada.

Ms. Pastuch asserts that a number of the allegations in the Notice of Hearing are wrong and/or misleading. The formal hearing is where her assertions and the allegations contained in the Notice of Hearing are tested and weighed against the evidence presented to the Hearing Panel. It would be premature to make any determination about the allegations at this stage in the process. Given the requirement that a Respondent must know the allegations against him or her, including the details in support of those allegations, the practice of including detailed allegations in a Notice of Hearing is indeed proper.

Decision

The current Notice of Hearing has been published on the internet for more than seven months now, satisfying the public purpose of providing notice to the general public of a public hearing. The Respondents are fully aware of the scope and nature of the hearing, having already objected to many of the allegations contained in the Notice of Hearing in great and voluminous detail. There have been subsequent notices posted on the website updating the general public and the Respondents on the scheduled dates for the hearing, and any member of the public who is interested can obtain the scheduling information and attend the proceedings.

The Hearing Panel has not been provided with any rationale or justification for the publication of confidential information of a private nature, specifically detailed information showing bank account numbers, bank account transactions and bank account balances of individuals and corporate entities. Accordingly, it is hereby ordered that the Notice of Hearing dated August 27, 2010 be removed in its entirety from the Securities Division section of the Saskatchewan Financial Services Commission website. The removal of the Notice of Hearing from the website does not amount to a Withdrawal of the

Notice of Hearing in any manner. The *viva voce* hearing proper will be heard as previously scheduled, commencing on July 11, 2011, and as the parties have been previously formally advised.

This is a unanimous decision of the Hearing Panel. An Order will be issued accordingly.

DATED at Regina, Saskatchewan, on April 11, 2011.



Gordon D. Hamilton
Commissioner