

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

AND

IN THE MATTER OF
CANADIAN RESIDENTS' UMBRELLA PLAN AND
SANJEEVA RANJAN SINGH

DECISION

Hearing Held February 23, 1999.

Before: Marcel de la Gorgendière, Q.C., Chairman
Rand Flynn, Commissioner

Appearances: Patti Pacholek, representing Commission staff
Sanjeeva Ranjan Singh, represented by Counsel, R.J. Smith

Decision dated: March 10, 1999

DECISION

This hearing was convened for the Commission to determine as stated in the Notice of Hearing whether:

1. it is in the public interest that
 - a. exemptions under *The Securities Act, 1988* (the "Act") not apply to the Respondents; Canadian Residents' Umbrella Plan (CRUP) and Sanjeeva Ranjan Singh (Singh);
 - b. the Respondents cease trading in securities, specified securities, exchange contracts or specified exchange contracts;
 - c. Singh cease giving advice respecting securities, specified securities, trades, specified trades, exchange contracts or specified exchange contracts; and
 - d. Singh:
 - i. resigns any position that he holds as a director or officer of an issuer or registrant;
 - ii. be prohibited from becoming or acting as a director or officer of any issuer or registrant; and
 - iii. not be employed by any issuer or registrant; and
2. the Respondents pay the costs of or relating to this hearing.

The allegations made in the Notice of Hearing to substantiate the request to the Commission for the above action were:

- "1. That Singh, was registered as a mutual fund salesperson employed by Pro-Fund Distributors Ltd.
2. Throughout January 1999 Singh provided the Nekanneets First Nation and others with promotional material (the Promotional Material") seeking an investment of 10 million dollars (in US funds) and later \$250,000 in an offshore financial instrument trading program (the "Program");
3. The Program and the market referred to by Singh does not exist in the context of the Promotional Material presented;

4. The Program has all the characteristics of a prime bank debt instrument scheme which include, *inter alia*;
 1. highly profitable - 400%;
 - a. totally risk free;
 2. readily available funding;
 3. no up front fee required;
 4. no repayment needed;
 5. offshore bank to bank transactions;
 6. sanctioned by banks, Federal Reserve and other international organizations such as the international Chamber of Commerce; and
 7. extremely secretive."

The Respondents denied the allegations of the Notice in a response filed under Section 9(3.1) of the Act as follows:

- "(2) Denied. At no time did Canadian Residents' Umbrella Plan or Sanjeev Ranjan Singh provide any Promotional Material to Nekanneets First Nation. At no time did Canadian Residents Umbrella Plan or Sanjeev Ranjan Singh seek, solicit or receive any funds or request an investment from Nekanneets First nation in the amount of \$10 Million US or \$250,000 Dollars US for the purpose of an offshore financial instrument trading program;
- (3) This allegation is ambiguous, not understood by Mr. Singh and is therefore denied. But by way of explanation he says: the context of the letters provided information on project financing for specific projects that have a humanitarian basis. Any individuals looking for financing could arrange the contracts with the financiers directly;
- (4) Denied. To Mr. Singh's knowledge there is no such thing as a prime bank instrument...What is it?? there are no written statements which use the words "sanctioned by banks, Federal Reserve and other international organizations such as the International Chamber of commerce." there is no mention of extreme secrecy and no written statement that this is a "prime bank debt instrument scheme";

It was made very clear to the party looking for financing that any project financing to be done would be arranged face to face at a Bank with legal advisors present and the party looking for financing would be required to present it's needs during this face to face meeting. At no time was there ever any statement with respect to repayment. This is a matter in the discretion of the financiers;

- (5) Denied. Mr. Singh has never traded in offshore financial instruments nor has he sought any funds for that purpose".

At the commencement of the hearing Exhibit C-1 was tendered by Commission counsel for the staff with the consent of the Respondents counsel. This exhibit, divided into a number of tabs of various evidentiary items, will be referred to throughout this decision by reference to the relevant tab numbers. While there has been an acceptance of the matters being filed the interpretation of their effect is in dispute and as well there was the *viva voce* evidence of three witnesses and that of the respondent Singh over which there is some contention.

The Commission will now give its interpretation of the evidence which leads it to conclude that the request of the Commission staff should be granted in the greatest part it being in the public interest that the exemptions of the Respondents be removed and the cease trade order extended as stated hereafter.

Tab 12 is a report of the International Chamber of Commerce, Commercial Crime Bureau (ICC) which deals with what has become known as "Prime Bank Instrument Frauds." As stated in the report, at page 1, they "generally speaking, refer to the trade in instruments falsely said to have been issued by banks. Standby Letter of Credit (SLC), Prime Bank Guarantees (PBG) and prime Bank Notes (PBN) are three of the most commonly known 'Prime Bank Instruments' used in these frauds."

The characteristics of the transactions are set out in the Notice of Hearing, Page 2, para 4 based on the ICC report. The report makes it clear that the approach made to proposed participants is capable of considerable change, it being the nature of ongoing fraud that as one approach is publicized that new versions are presented. The report further describes how local bank and advisors like attorneys are sought out by those developing a scheme to lend credibility to various parts of the scheme or program and how the results continue to have an extensive harmful effect around the globe.

The question was, were the Respondents involved in such a scheme or program in forwarding material to Chief Larry Oakes, Nekanneets First Nation as set out in Tabs 15 and 16 and in the subsequent discussions by Singh with advisors to Chief Oakes. These items are now attached to this decision as:

Tab 15 - Attachment 1 and Tab 16 - Attachment 2.

The Commission heard evidence from Singh as to the distribution of the items and he did not dispute either their authorship or their distribution on behalf of CRUP. These items were referred by Chief Oakes to Thomas John Waller, Q.C. counsel for the Treaty Land Entitlement Trust of the Nekanneets First Nation. He gave evidence of following up on the memo dated 06/01/99, Tab 15, in a telephone call with Singh for 18 minutes on January 12, 1999 at approximately 3:00 p.m.

Mr. Waller recalls Singh advising him that money would stay under the clients control but would be used for backing an international project. He wanted a letter so as to arrange a meeting in Switzerland with the Federal Reserve. Mr. Waller recalls asking if it was the Swiss Federal Reserve and that he was told no, it was the US and advised further that they had an office there. He further advised Mr. Waller that

the Federal Reserve would be involved in backing the funding for projects such as hospital construction in the Third World.

Mr. Waller gave further evidence of contacting a Washington lawyer, Mr. Neuman, with connections with the US Federal Reserve and discussed the phone call with Singh and followed up his enquiry with a letter Tab 9 confirming his conversation with Neuman and his request for verification of Federal Reserve involvement in such funding.

The evidence of Waller that Singh had referred to participation of the US Federal Reserve was directly contradicted in evidence by Mr. Singh. The Commission having heard the evidence of both finds that Mr. Waller's evidence is the correct version supported by his confirming letter typed and sent within less than a full day after his conversation with Singh. The commission feels that this evidence is important as it supplements the written documentation supplied and shows the Respondent Singh actively involved in supporting the written material. In other words where there is a conflict between the evidence of Waller and Singh the Commission accepts the testimony of Waller. It did not believe Singh.

This evidence also becomes more important in light of the testimony of William C. Kerr, a National Bank Examiner for the United States Office of the Controller of Currency who gave evidence by phone. He was accepted as being an expert witness in banking practice. He had been provided with copies of Tab 9 and Tab 15 and 16. His evidence could be summarized as directly contradicting any idea that the Federal Reserve authorized anyone to participate in funding transactions for humanitarian purpose or otherwise and had no staff or offices in Europe nor authorized person transacting business of such a type. His review of the material could be summarized as stating there is no financial substance to the idea of such transactions. The purpose of the documentation is to confuse and defraud. He advised he sees similar letters every week and none of them "have ever worked out." He stated that the concept of even a legitimate bank like Barclays issuing an invitation to deal in the context of the letter setting out travel arrangements as suggested would occur in the material put out by the Respondent was, "bizarre." He also advised, in answer to the Respondent's counsel, that the procedure outlined was one of unnecessary secrecy in advance of any supposed meeting in that there was no reason for the parties not to be known in advance of any transaction before sending details of bank accounts of the participant.

Counsel for the Respondent in cross-examining Waller and Kerr inquired as to whether in certain circumstances the proposal could conceivably be arranged in such a way to avoid risk. For example; presume the Bank Guarantee is bonafide and properly authorized and not that of a bank with no funds. However, what is important to the Commission is what is the effect of these types of proposals in their ordinary application in the real world. The evidence of Kerr is that they never work out. They refer to a non-existent product or a product that, if it exists, does not bring in the high rapid multiples of profit in relation to amounts at risk. In fact, as Mr. Kerr stated, no bank transaction is without risk. That is why there are procedures set up to control and limit banks and establish reserves.

The evidence of Mr. Wayne Rude, Manager of New Horizons, a consulting agency, established by the

Nekanneets to give business advice to them and others, stated he had received the items of Tab 15 from Chief Oakes and also spoke to Mr. Singh. Mr. Rude stated that he talked about Federal Reserve involvement in a transaction and outlined the procedural matters referred to in the correspondence with Chief Oakes. He discussed Mr. Singh's fee of 11.1% of the profits but the manner of payment was not discussed. He also discussed the nature of the trust conditions if money was sent. Mr. Rude was advising caution at least until details were provided that would establish confirmation of a successful transaction with someone he could trust. There was evidence of information being sought from a Tanyss Munro at a Treaty Governance Office. She had heard of the transaction and thought it might be of interest. However, Mr. Rude referred her back to Singh and suggested she also contact the Hobema Band who may have some knowledge of the transactions.

Mr. Singh confirmed at the hearing his authorship of the documents for "Project Funding Programs including Tab C6 (see attachment 3).

He stated that he prepared this for Chief Gamble of the Beardy Reserve. He was contacted by Singh at the request of Tanyss Munro who had first heard of Singh from another individual who Mr. Singh said he told about another project funding matter he was involved in concerning Monsertt.

Mr. Singh also described his contact by phone with a Connie Stern of New York, a contact person for an organization called CDH who he learned of from an attorney in Washington. He advised he talked a lot with her and said CDH had offices in New York and Atlanta. She gave the details of the procedures which he had communicated to others but he said he never sent any drafts back to her to see if they were correct. He also advised the Commission that they would want a finders fee and that he would be forwarding any documents like the letters of intent (Tab 15 - attachment 1) if received to Connie Stern or CDH as they would arrange the contact from the European program sponsors.

The Commission has not set out all the testimony because it feels it unnecessary to do more than outline the proposals made and some of the additional explanations made by the respondent Singh. What we are asked to decide upon, under *The Securities Act*, is whether the conduct shown warrants removal of the use of exemptions and an extension of the Cease Trade Order. It is not necessary to prove fraud in order to do this.

What is necessary to show in cases where an adverse finding would interfere with the right to earn a living that the standard of proof rises with the seriousness of the consequences to the Respondent. *R v Oakes* (1986) 1 S.C.R. 103 and *McGroarty, et al* (1990), 13 O.S.C.B. 3887 at page 3935 and 3936. Such proof requires something more than the preponderance of probability. Here the evidence as to what was done by the Respondents is not in dispute as to the written nature of the solicitation. Where there is a dispute it is as to some of the verbal additions. The Commission has shown its acceptance of the convincing nature of the testimony of Mr. Waller and his correspondence prepared close on to his acknowledged discussion with Mr. Singh. The Commission has heard Mr. Singh defend the attempted procurement of funds for a project of a type that has not been known to result in a benefit

to the investor. If someone has benefitted as an investor it is not known about those on whom the ICC reported or to Mr. Kerr of the Controller of Currency who have seen the results of similar programs. Yet Mr. Singh persists in the legitimacy of individuals inquiring into and participating in a project that closely resembles a notorious fraud. After considering all the evidence it is clear and convincing that it is not in the public interest that Mr. Singh should be in any way connected to the sale of mutual funds or any other security whether exempt from licensing and prospectus requirements of *The Securities Act* or not.

It is suggested that the Respondents did not solicit funds for any type of security. To be in breach of the requirements of *The Securities Act* it is not necessary to request funds for oneself. What is prohibited is trading in securities contrary to the Act. Trading includes as stated in subclause 2(1)(vv)(v) any act, advertisement, solicitation conduct or negotiation directly or indirectly in furtherance of anything mentioned in subclause (i) to (iv); and (i) refers to anydisposition of a security for valuable consideration. Sec 2(1)(ss) states, "security includes(viii) any certificate of share or interest in a trust, estate or association (xiv) any investment contract whether any of the foregoing relates to an issuer or proposed issuer.

An investment contract is the most likely basis for a security in this situation. It is defined in the "Howey Case" (*S.E.C. v. WJ Howey Co.*, 328 U.S. 293 (1946)) as an investment of money in a common enterprise by persons led to expect profits (primarily) from the efforts of others.

Under this program an individual would enter into a contract and put up funds (investing) that would provide the basis for a funding program and as well return a profit. It was alleged that the investor maintained control of the investment. This was never completely shown to be the case but Mr. Singh clearly did state that the funds placed did in some fashion count as part of the funding banks reserves. In order to do that it would have to be able to exert control or it would not form a reserve. In other instances it might be used to purchase instruments that were rapidly traded in large denominations yielding huge profits from a small margin on each transaction. In any event the person putting up funds was to profit from the efforts of others and the funds were bound in some fashion to others (a common enterprise) in order to provide for the funding of huge loans. (\$50,000,000 US according to Tab 15, page 3).

The Commission finds then that the Respondent's conduct constituted acts in furtherance of trade in securities. It further finds that this conduct is not in the public interest. In fact it considers any association by a registrant in any way with the provision of information of such a dubious proposal is, if not criminal, grossly negligent and cannot be condoned.

The final question then in the light of these findings concerning the conduct of the Respondents is whether the public interest requires a permanent cease trade and removal of the exemptions of the Respondents.

Personal circumstances of Mr. Singh require some consideration. He is a young man and relatively new

to the business of securities sales. he is the father of four children. A life time of removal from the industry would be extremely harsh. It is possible after a few years to establish by other conduct a capability to once again be placed in the fiduciary position of a registrant. However, too short a period will do nothing to convince any registrant of the extreme concern that the Commission has over registrants being involved in any way in similar schemes that can lead to disastrous consequences for investors. We have therefore decided in these circumstances that it is in the public interest to order that:

- a. any or all of the following exemptions do not apply to Sanjeeva Ranjan Singh:
 - i. The exemptions in sections 38, 39, 39.1, 81, 82 and 102;
 - ii. The exemptions in the regulations providing for exemptions from sections 27, 58, 71 or 104 to 109; and
 - iii. An exemption in any decision of the Commission providing for an exemption from any provision of the Act or regulations;
- b. Sanjeeva Ranjan Singh:
 - i. cease trading in securities, specified securities, exchange contracts or specified exchange contracts;
 - ii. cease giving advice respecting securities, specified securities, trades, specified trades, exchange contracts or specified exchange contracts;
 - iii. resign any position that he holds as a director or officer of an issuer or registrant;
 - iv. is prohibited from becoming or acting as a director or officer of any issuer or registrant;
 - v. not be employed by any issuer or registrant

for a period of three years from the date of this order.

- c. any or all of the following exemptions do not apply to Canadian Residents' Umbrella Plan:
 - i. The exemptions in sections 38, 39, 39.1, 81, 82 and 102;
 - ii. The exemptions in the regulations providing for exemptions from sections 27, 58, 71 or 104 to 109; and

- iii. An exemption in any decision of the Commission providing for an exemption from any provision of the Act or regulations;
- d. Canadian Residents' Umbrella Plan cease trading in securities, specified securities, exchange contracts or specified exchange contracts;

The Commission is not ordering costs against Mr. Singh on the basis that the Order applicable to him is sufficient in the circumstances. However, if it is established that CRUP has assets it shall pay for the costs of the Commission for the hearing which we set at \$3480.10.

DATED at Regina, Saskatchewan, March 10, 1999.

"*Marcel de la Gorgendière*"
Marcel de la Gorgendière, Q.C.
Chairman