

IN THE MATTER OF
THE SECURITIES ACT, R.S.S. 1978, c. S-42

AND

IN THE MATTER OF
AMBROSIA VENTURE FUND INC., AMBROSIA FOOD COMPANY LTD.,
G T RESTAURANTS INC. AND G T EQUITIES INC.

HEARING HELD SEPTEMBER 24, OCTOBER 19, and
NOVEMBER 23, 1987

Held before: W.M. Wheatley, Chairman
Adelaide MacDonald, Vice-Chairman
Herbert Dow, Commission Member

Adviser to Commission: Serge Kujawa

Counsel for the
Commission Staff: Gerry Halischuk and Harold Huber

Counsel for Ambrosia
Venture Fund Inc.,
Ambrosia Food Company Ltd.,
G T Equities Inc.: Ernest Hawrish

DECISION OF THE COMMISSION

On the 23rd of July, 1987, a Temporary Cease Trade Order was issued affecting Ambrosia Venture Fund Inc., Ambrosia Food Company Ltd., G T Restaurants Inc., and G T Equities Inc. It was a provision of that Order that a hearing be held before the Commission for the purpose of determining whether a permanent Cease Trade Order, pursuant to Section 151(1) of the Saskatchewan Securities Act, (the "Act") be made in respect of the securities of the above companies. The allegations made by the Commission staff for the permanent Cease Trade Order were that Ambrosia Venture Fund Inc. had not met the terms of closing by November 30, 1986 as provided for in the Offering Memorandum and Commission Order.

Ambrosia Venture Fund Inc. (Ambrosia) was incorporated for the purpose of being registered under the Venture Capital Credit Act of Saskatchewan. Ambrosia Venture Fund Inc. offered shares to the public pursuant to an Order of the Commission under Section 21 of the Act, dated the 2nd day of April, 1986. The offering provided that sales could be made under Confidential Private Offering Memorandum to sophisticated investors. The offering provided for a unit consisting of 1,000 shares priced at \$9,500.00.

The offering was originally intended to close on the 30th of June, 1986, but by Orders of the Commission that closing date was extended to September 30, 1986 and then to November 30, 1986.

According to the terms of the Offering Memorandum, a minimum of 60 units had to be subscribed for before the date of closing. The minimum of 60 units translated into a total dollar amount of \$570,000.00 which was to be raised in order to close the offering. The Offering Memorandum indicated that a maximum amount of \$950,000.00 was being sought as the total issue for Ambrosia.

The terms of the Order also provided in paragraph 6:

"(6) each investor must subscribe for and purchase the Common Shares pursuant to the terms and conditions described in the Confidential Private Offering Memorandum provided that in no case shall any single investor contribute less than \$9,500.00 on or before June 30th (or the extended date referred to in paragraph (5)) and the Common Shares may be purchased by individuals only or holding companies, the majority of whose voting and equity shareholdings are owned by an individual who qualifies as a purchaser under requirements of paragraph (8)"

The terms of the amended Offering Memorandum said on page 6 that:

"Subscription to each unit requires a minimum of \$1,000.00 cash deposit plus a letter of credit for the remainder."

The Offering Memorandum further went on to say,

"Subscription of one unit requires the completion of a subscription form (Schedule "A" attached), providing a cash deposit of \$1,000.00 which will be held in trust and an unconditional irrevocable letter of credit from a recognized banking institution for \$8,500.00 as per Schedule "B" attached. Upon subscription, a purchaser must complete the undertaking to the Saskatchewan Securities Commission as per Schedule "C" attached."

The selling of the units took place after the second day of April to sophisticated investors. Affidavits were provided to the Commission outlining to whom sales were made and that they fit the sophisticated investor exemption rule as set out in the Order of April 2, 1986. The offering memorandum was amended later in April to provide for letters of credit instead of promissory notes and other related matters.

On December 19, 1986 The Venture Capital Corporation Program received an affidavit signed by the officer of Ambrosia (Mr. Hogan) that the minimum subscription had been reached.

The issue before the Commission was whether on the date of closing sufficient subscriptions to units had been received by the company. This was important for three reasons:

1. For investors to obtain the tax credit under the Venture Capital Program;
2. For the company to be provided sufficient funds to start business and carry it through its initial phases; and
3. For investors to be returned their money if the subscription for units was not reached on the date of closing.

DECISION

It is the opinion of the Commission that in order for Ambrosia to close on November 30, 1986 as per its Order and Offering Memorandum as amended, it needed three things:

1. Subscription forms signed by subscribers to the issue;
2. Deposits in a trust account in Canada in the amount of at least \$60,000 representing \$1,000 from each of 60 units sold; and

3. Letters of credit for \$8,500.00 each in favour of the Hong Kong Bank either in place with the Hong Kong Bank, or Ambrosia Venture Fund Inc. or the trustee, to be provided to the Hong Kong Bank at a future time, representing 60 or more units subscribed.

Therefore, as of the date of closing, there should have been at least 60 subscription forms, \$60,000 on deposit and 60 letters of credit or if there were multiples, then equal to the aggregate amount of \$570,000 less the cash on hand.

Dealing with each of the three matters in issue as follows:

1. Subscription Forms

Evidence was tendered showing that there were many more than 60 people who signed subscription forms. Some of those who signed subscription forms were represented on the affidavits that were presented to the Commission as having bought units. However, some did not buy any units. The Commission is satisfied that on the date of closing there were sufficient subscription forms.

2. \$1,000.00 Deposits

The Commission found that there were an insufficient number of deposits held by the company on or before the closing date.

It was admitted by Mr. Hawrish that some of the cheques for \$1,000.00 were actually held in files without being deposited in the bank on November 30th.

According to the report done by the accounting firm of Peat Marwick for the Venture Capital Corporation Program Branch, even if those cheques which were held incorrectly by the promoters were deposited immediately after November 30th, there would still be insufficient funds representing 60 deposits. That report showed that by December 3, 1986 there would have been 30 units with deposits with the

remainder trickling in through December and January.

Testimony was provided to the Commission by two witnesses who the Commission believed, that salesmen of the units actually asked clients to back-date some cheques to before the November 30th date. This may have occurred with others.

The promoters, Mr. Hogan's and Mr. Hawrish's deposits were not deposited until January 5, 1987.

Accordingly, there is no doubt in the Commission that deposits for subscriptions were not sufficient on the 30th of November, 1986 to close this transaction.

3. Letters of Credit

The third item that was required by November 30, 1986 were letters of credit which would represent at least 60 units or \$510,000.00. By the admission of Mr. Hawrish most of these letters of credit were not provided to Ambrosia Venture Fund Inc. In fact, some letters of credit are still outstanding. Many letters of credit were not provided for until April, May or June of this year.

It is common commercial practice that letters of credit can be acquired in a reasonably short period of time. Letters of credit are not new to the commercial market. On the date of closing they all should have been in the hands either of the trustee, Ambrosia Venture Fund Inc. or the Hong Kong Bank (in whose favour the letters of credit were all to be drawn).

Evidence showed that some letters of credit were not received indeed until July. It also showed that some letters of credit came in January, February, and March of 1987 after much urging by some of the promoters. True sophisticated investors should not have that kind of difficulty in obtaining letters of credit.

The effect of these serious shortcomings at the time of closing left the company with insufficient funds to begin their business. Testimony was received from Mr. Hogan who

said that \$570,000.00 was the minimum amount of money to make the Food Factory go. Yet on November 30th no one knew exactly how much money they really had. In spite of this, liabilities were incurred and renovations were begun on the restaurant. Proceeding on the venture without knowledge of what they were to be working with could not only put people with whom the restaurant was dealing for renovations in jeopardy, it seriously put the shareholders that had subscribed into a "no win "situation.

The date of closing in the securities business is an extremely important date. Commercial practice in other businesses also dictate the date of closing or completion is the key date of a commercial transaction. It is the date when buyers and sellers know that all that is needed to transfer shares is available. All the money is in and all the conditions are met. Similarly in real estate, the parties to the transaction must have all the financing in place and conditions met before the property is conveyed.

The closing date must have meant something to the promoters in this issue otherwise cheques would not have been back-dated nor would extensions in time be granted by the Securities Commission. In all cases, the Commission had been flexible in their dealings with Ambrosia to give them adequate time to get sufficient funds for their business.

Affidavits were tendered and assurances were given to the Commission and Venture Capital Program Branch that Ambrosia had reached its minimum amount. However, it was painfully obvious that it was not the case. The Orders and the Offering Memorandum as amended were clear on their face that all three items must be completed by November 30, 1986. This issue should not have proceeded and the deposits should have been returned to the subscribers.

Accordingly the Cease Trade Order affecting all the above companies is considered permanent.

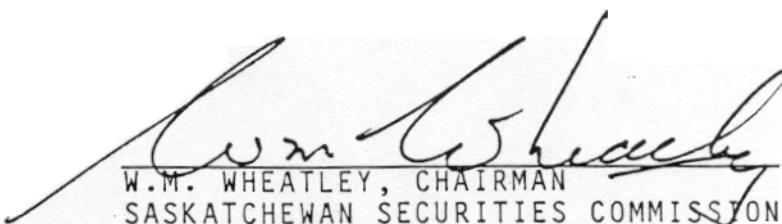
Argument was made before the Commission that the date of closing in securities law and in respect of this particular issue is a date only on which sufficient signed subscription.

forms need to be received by the venture. After the date of closing it would be up to the promoters to collect the remainder of money, be it deposits or letters of credit. If this was the case the promoters would still not have any idea what funds they have to work with. Indeed, some people who signed subscription forms still have not provided letters of credit. This is no way to start and operate a business. For that reason alone a Permanent Cease Trade Order should issue. Shareholders or subscribers should at least be able to expect that good business practice will be used by the promoter and that they will have some reasonable expectation that sufficient funds will be on hand to meet at least those uses of funds that are provided for in the documentation that may have been given to them by a promoter.

Therefore, it is the order of this Commission that a Permanent Cease Trade Order for the above reasons be issued to the following companies:

Ambrosia Venture Fund Inc.
Ambrosia Food Company Ltd.
G T Restaurants Inc. and
G T Equities Inc.

DATED at the City of Regina, in the Province of Saskatchewan, this 3rd day of December, 1987.



W.M. WHEATLEY, CHAIRMAN
SASKATCHEWAN SECURITIES COMMISSION