

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

AND

IN THE MATTER OF  
CELEBRATIONS LE CLUB LIMITED PARTNERSHIP  
AND  
CELEBRATIONS SALOON LTD.  
HEARING HELD SEPTEMBER 20, 21 and 26, 1988

Held before:                   W. M. Wheatley, Chairman  
                                  Marcel de la Gorgendiere  
                                  Morley I. Meiklejohn

Representing the Commission:   J. M. Hall  
Representing Celebrations  
    Le Club Limited Partnership  
and Celebrations Saloon Ltd.   B. M. Wasyliw

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DECISION OF THE COMMISSION

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Purpose of the Hearing:

The purpose of the hearing was to determine whether the Commission should make an order under Section 20(5) of The Securities Act R.S.S. 1978 c. S-42 (the "Act") that any or all of the exemptions described in subsections 20(1) to 20(3) should not apply to Celebrations Le Club Limited Partnership and Celebrations Saloon Ltd. (the "Respondents") and to determine whether the Commission should order that trading in the limited partnership units of Celebrations Le Club Limited Partnership (the "Partnership") should cease pursuant to Section 151 (1) of the Act.

In addition to the Agreed Statement of Facts and exhibits entered by both the staff and respondents, the Commission heard from witnesses Dean Murrison, Glen McGlaughlin, Dorothy Mondor and Carol Henrickson on behalf of the staff. Mr. Andrew Deslauriers appeared as a witness on behalf of the respondents.

Celebrations Le Club Limited Partnership went to the public market under a prospectus which receipt was dated February 14, 1986. It called for the sale of 290 limited partnership units all of which were sold. The sale closed May 31, 1986. Construction was to begin shortly thereafter with an opening in late 1986 or early 1987.

From the beginning, the Partnership was beset with financial problems. Those problems led to a cash call in March, 1987 and a debenture issue in February, 1988 and another cash call in May, 1988. The order which permitted the debenture issue is the subject of this hearing.

The financial problems began almost immediately after the closing of the sale. Unfortunately, however, the Commission found that the dire straights in which the Partnership found itself were never totally communicated to the unitholders. Lack of full information in current descriptions of the problems of the Partnership faced the unitholders each particular time they were called together, starting from the first annual meeting.

Unfortunately, the Commission found that the General Partner did not deal with the unitholders in an entirely forthright manner from the beginning. The unitholders were not told of massive over expenditures caused by Liquor Licensing Commission requirements at the first annual meeting. Four months later, the first cash call was made. The first cash call was followed by a letter describing the situation as good and that a return on their investment was expected to be 38% for the year!

There was, at times, total disregard of the unitholders by the General Partners right up to the hearing. The General Partner took a prior security position to the debenture holders with the registration of a \$300,000.00 mortgage filed ahead of the debenture mortgage. Both mortgages were filed exactly the same day.

#### Decision of the Commission

The Commission issued an order on February 8, 1988 with respect to the debentures to be issued by the Partnership. The desire of the Partnership was to issue debentures which would bring the company \$600,000.00. The debentures were to be secured by a second mortgage.

Securities legislation gives Commissions wide discretion to waive or vary parts of the legislation, regulations and Commission policies. That discretion is embodied in orders of the Commission which are granted under specific sections and sets down various terms and conditions under which a particular exemption is granted. The process to obtain an order is done by negotiation between the Commission staff and the proponents of the exemption application. Even after an order has been issued, there is the opportunity to have the order varied if the case can be made to the staff and the Commission.

In spite of the discretion and flexibility the Commission has in making orders, once made it has force under the legislation and is, accordingly, expected to be followed. The order of February 8, 1988 was that type of order. It imposed terms and conditions on the corporation which the Commission expected to be completed. It had time limits for the sale to be completed and numerous reporting provisions to both the Commission and the shareholders. It detailed the process under which the distribution of the debentures were to be made. Of particular concern to the Commission staff in this hearing were conditions four, five, six, seven and eight of the order.

The order was made in such a fashion so as to protect debenture holders both by how the money was to be paid to creditors and how much information debenture holders were to receive on a continued basis.

The Commission found paragraphs five, seven and eight had not been complied with. Contrary evidence was given by the parties respecting paragraph six. The Partnership made a conscious effort to comply with filing the weekly statements. The Commission did not find that there was a waiver of number six after the weekly statements stopped coming to the Commission. However, the Commission staff did not pursue the filing of weekly statements, therefore, the Commission does not consider number six to be in default. However, the requirement to file monthly statements and how the funds were distributed to creditors was not complied with under the terms of the order.

The Commission, accordingly, orders under Section 20(5) the exemptions described in Sections 20(1) to 20(3) do not apply to Celebrations Le Club Limited Partnership and Celebrations Saloon Ltd.

With respect to the second issue arising from the hearing, that being the determination of whether a permanent cease trade should be put into place, the Commission is not unmindful of the delicate position that the Partnership is in. There is an outstanding cash call and the wolves are at the door. The General Partner was unable, however, to show that the completion of the cash calls would have any effect other than postponing the inevitable due to continuing operating losses.

Numerous (up to 70) units have not met their cash call. There is no question that the money is needed by the Partnership and a Cease Trade Order on a permanent basis would hamper the Partnership realizing on its cash call. The Commission found, however, that for the cash call of May 7, 1988 and the ensuing period the unitholders, even those who have provided the money under the cash call, did not have the current information nor the basic status of the financial condition of the Partnership. Perhaps if those unitholders did have the accurate information the results for the cash call would be different. A Cease Trade Order of a permanent nature is not appropriate under the circumstances. Information must be provided to the unitholders so that they can make an informed decision on whether to provide the money for the cash call or risk foreclosure. Apparently there are some unitholders prepared to put more money into the venture in order to demonstrate to creditors that their bills will be paid.

Accordingly, until such time as the entire Partnership has an accurate and current description of the problem, the Securities Commission imposes a Temporary Cease Trade Order based on the following terms:

1. All trades in the Partnership units cease;
2. The Partnership obtains an audited financial statement for May 31, 1988 and it shall be filed with the Commission;
3. The Partnership obtain interim statements for the period between May 31, 1988 and September 30, 1988 which form shall be approved by the Commission and these statements should be delivered 15 days before the Annual General Meeting.

