

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

AND

IN THE MATTER OF
PLATINUM EQUITIES CORPORATION
GEORGE BISSETT
DAN BRADY
JANICE GRANDEL and
KENT BRADLEY OWENS

DECISION

Hearing Held July 5, 1999.

Before: Marcel de la Gorgendiere, Q.C., Chairman
Art Wakabayashi, Vice-Chairman
Rand Flynn, Commission Member

Appearances: Patti Pacholek, representing Commission staff
Kevin Mellor, counsel for Janice Grandel and Kent Bradley Owens

Decision dated: July 14, 1999

DECISION

The Commission heard argument on July 5, 1999 in a preliminary matter prior to a hearing adjourned to July 19, 1999. A decision was given orally on July 5, 1999 with an undertaking to issue a written decision.

The matter raised in the hearing notice of March 29, 1999 at the request of the Respondents Grandel and Owens is whether the Commission should suspend or revoke a cease trade order of October 21, 1998 extended on November 4, 1998 and the preliminary matter raised was which party would have the onus of proof at the hearing of whether it was in the public interest to suspend or revoke the Order.

The position of the Commission is that the cease trade order continues until the Commission is satisfied that it is in the public interest to remove it. We follow the decision of the Nova Scotia Securities Commission in the matter of Castle Capital Inc., "When the Commission is exercising its public interest jurisdiction, such as when revoking a cease trade order, it must consider all existing facts and circumstances in exercising that jurisdiction and not restrict itself to a simple proposition that the removal of the factual basis for originally making the order will automatically lead to its revocation".

The Commission makes an order, such as an investigation or cease trade order, on the basis of information that is presented to it sufficient to justify its issue in the public interest. Section 158(3) of the Act allows an interested person to apply to revoke or vary any previous decision made by the Commission. The notice of hearing in question was issued as a result of an application by the Respondents. The Commission finds it only reasonable to presume initially that the order complained of is still valid until such time as evidence is presented to warrant a change. Further it feels that due process is best achieved if the individual or company seeking a change first advances enough evidence to satisfy the Commission of its public interest requirements or to raise sufficient evidence to indicate that the continuance of the order (decision) is unnecessary or abusive in the circumstances that exist at that time.

If that is the case then the burden would shift to the staff of the Commission to provide evidence to the contrary justifying the continuance of the order (decision). The Commission feels that the staff of the Commission in carrying out an investigation must be allowed a reasonable time to establish the facts before it decides that it is necessary or not to pursue administrative or legal sanctions in proceedings before the Commission or the courts. The Respondents are entitled to make an application to revoke or vary but should not expect the Commission staff to justify continuance of the order when not necessarily in possession of the facts that would allow them to take a position. Upon the Respondent providing sufficient evidence as to the unreasonableness or abusiveness of the circumstances to which they are subject then the onus would change.

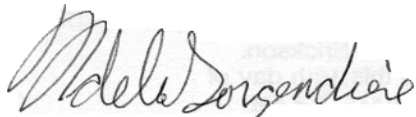
Questions were raised about the validity of the order made as no affidavit information was supplied at the time of its issuance. The Commission feels that this is unnecessary as it is not required under section 12(2) of the Act under which the order was made. There is a distinction between that section and section 12(1).

A further question was raised about the order offending certain aspects of the "Charter". We find that this matter was amply canvassed in *Blayne Barry Johnson and Robert Arthur Hartvikson v. British Columbia Securities Commission* in a decision of M.T. Allan Justice of B.C. Supreme Court, B.C.S.C. Weekly Summary Edition 99.16 April 23, 1999, p.11. We conclude that the proceeding before us is clearly administrative and not penal and that no Charter provisions are being offended.

In addition counsel for the Applicant raised questions about the nature of the burden of proof when a person's livelihood is at stake as discussed in *Rosen (Re)* (1991), 14 OSCB 1091. We are not at the point of the hearing where this becomes a relevant matter but when we are we can advise of our previous acceptance of the line of authorities raised in that case and the need for "something more" than the balance of probabilities based on the seriousness of the consequences.

As a result the hearing is to continue on the 19th day of July, 1999.

DATED at Regina, Saskatchewan, July 14, 1999,



Marcel de la Gorgendiere, Q.C.
Chairman