

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

AND

IN THE MATTER OF
MANITOU SPRINGS VENTURE CAPITAL CORPORATION
NEW ERA VENTURE CAPITAL CORPORATION
MANITOU SPRINGS HOTEL, INC.
MANITOU BEACH MINERAL POOL INC.
DALE HAYTER

DECISION

Hearing Held MAY 18 & 19, 2004

Before: W.F. Ready, Q.C., Chair
 G. D. Charman, C.A., Commissioner
 F. J. Reidy, C.A.I.B., Commissioner

Appearances: Patti Pacholek, representing Commission staff
 Neil Fisher for Manitou Springs Venture Capital Corporation, New Era
 Venture Capital Corporation, Manitou Springs Hotel Inc., Manitou Beach
 Mineral Pool Inc. and Dale Hayter

Decision dated: May 26, 2004

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DECISION

The purpose of this hearing is to consider whether:

1. It is in the public interest to order pursuant to section 134 of *The Securities Act, 1988* (the “Act”) that:
 - (a) the exemptions specified in clause 134(1)(a) of the Act do not apply to Dale Hayter (“Hayter”);
 - (b) Hayter cease trading in securities or exchange contracts;
 - (c) Manitou Springs Venture Capital Corporation and New Era Venture Capital Corporation, and Manitou Springs Hotel Inc., and Manitou Beach Mineral Pool Inc. (the “Companies”) and Hayter cease contravening the provisions of the Act, decisions of the Saskatchewan Financial Services Commission (the “Commission”) and undertakings made by the Companies and Hayter to the Commission as set forth in the Notice of Hearing herein;
2. It is in the public interest to order pursuant to section 135.1 of the Act that the Companies and Hayter or any one or more of them do pay an administrative penalty of up to \$100,000.00;
3. Pursuant to section 161 of the Act that the Companies and Hayter and any one or more of them pay the costs of or relating to the hearing.

At the outset of this hearing documents tabbed under numbers 2 to 98 and contained in two three ring binders were tendered by Counsel for the Staff of the Commission as exhibits, and with and by the agreement of Counsel for the Companies and Hayter, all were admitted as exhibits, with the exception of a document entitled “Report to File” dated June 25, 2003, and found under Tab 95.

As well Counsel for the Companies and Hayter admitted the matters and allegations set forth in the Notice of Hearing herein and numbered therein as 1 to 32, and 34 to 55, and 57 to 80, and 82, and 84 to 103.

In addition Counsel for the Staff of the Commission called three witnesses, namely Ian McIntosh, Deputy Director-Corporation Finance of the Commission, Louise McMaster a complaining shareholder and Lionel LaBelle, Director of Saskatoon Genesis Fund, a complaining shareholder.

It is clear from the evidence that the Companies have failed over many years to comply, and are still failing to comply, with:

- (a) the provisions of the Act, particularly in the filing of financial statements,
- (b) with the decisions of the Commission and

- (c) undertakings given by the Companies to the Commission; all notwithstanding considerable patience and persistent effort by the Commission staff to obtain compliance. Counsel for the Companies admits this non-compliance.

So far as Hayter is concerned, is he in his capacity as a Director and in a number of instances as President, of the Companies, affected by the said infractions of the Companies to the extent that he should be disentitled to the exemptions provided for in section 134(1)(a) of the Act? Counsel for the Staff of the Commission argued that he is by virtue of section 97 and 117 of *The Business Corporations Act*. No interpretive case authority was cited to support this position. In the absence of such confirmation, we think that *The Business Corporations Act* and *The Securities Act, 1988* stand alone from each other and that breaches under *The Business Corporations Act* are to be dealt with exclusively under that legislation and that breaches under *The Securities Act, 1988* are to be dealt with exclusively under that legislation. It is of note that these proceedings were instituted solely "In the Matter of *The Securities Act, 1988*".

To follow the matter further there is an express provision in the Act, whereby under section 134(1)(f) the Commission can order that a director and senior officer do cause a company to, comply with or cease contravening a provision of the Act or the regulations et cetera. This seems to us to be an express provision whereby a director and an officer breaching such an Order, could be held accountable for the contraventions of a company. There is no evidence of any such Order by the Commission in this case. In the absence of such an Order Hayter cannot be held responsible for the said contraventions of the Companies and accordingly we are not prepared to order that the exemptions specified in paragraph 134(1)(a) of the Act do not apply to him.

We are also to consider whether we should order that Hayter cease trading in securities or exchange contracts. Counsel for the Staff of the Commission admitted that at the time of hearing Hayter was not trading in securities or exchange contracts. How then could we order that he cease to do something he was not doing? Accordingly at this time we are not prepared to make any order relative to Hayter trading in securities or exchange contracts.

As to the Companies, they have contravened, and are still contravening, the provisions of the Act, decisions of the Commission and undertakings given by them to the Commission, and we are prepared to order that they cease doing so.

So far as an administrative penalty is concerned relative to the contraventions by the Companies, we view these contraventions as serious, both as to each individual contravention but also the length of time they have continued, all in the light of considerable effort and patience by the Staff of the Commission to obtain compliance. As well threats by the Staff of Commission that the contraventions by the Companies could lead to a hearing such as this appears to have had no significant effect relative to compliance by the Companies. At the time of this hearing there are still matters of non-compliance outstanding. We think one could safely say that the non-compliance by these Companies has been continuous and flagrant and that such conduct is highly prejudicial to the public interest. Accordingly we think an administrative penalty of \$15,000.00 payable by each of the Companies is appropriate.

So far as the costs of the hearing are concerned, section 161 of the Act provides that we may make an order as to the costs of this hearing if there has been non-compliance with any provision of the Act. It is clear that such has been the case and in the circumstance of this matter and considering the factors relative thereto, we are prepared to award costs to the Commission in the sum of \$11,720.09 payable by the Companies, equally.

In summary then, we consider it to be in the public interest to order pursuant to Section 134 of the Act, as follows:

- (1) that the Companies, and each of them, do cease contravening the provisions of the Act, decisions of the Commission and undertakings made by the Companies to the Commission;
- (2) that each of the Companies pay to the Commission an administrative penalty of \$15,000.00;
- (3) that the costs of this hearing in the amount of \$11,720.09 be shared equally by the Companies and paid by them to the Commission.

DATED at Regina, Saskatchewan, May 26, 2004

“W. F. Ready”

W.F. Ready, Q.C.

Chair, and on behalf of the
other Members of the Hearing Panel