

**In the Matter of
The Securities Act, 1988, S.S. 1988, C.S42-2 (the Act)**

and

**In the Matter of
Gold Vault Metals, LLC
Worth Bullion Group, Inc.
Brian Darrow
Vincent Zapputo
Mark Walker**

DECISION

Hearing Held: January 11, 2012

Before: Paul Robinson, Panel Chairperson
Derrek S. Fahl
Mary Ann McFadyen
(collectively referred to as the "Panel")

Appearances: Mr. Sonne Udemgba for the Staff of the Commission ("Staff")

No appearances by Gold Vault Metals LLC, Worth Bullion Group Inc., Brian Darrow, Vincent Zapputo, Mark Walker or anyone on their behalf.

Decision Dated: A decision was reserved pending the receipt of additional information from Staff counsel. This document dated May 9, 2012 is the decision.

Purpose of the Hearing:

The Notice of Hearing, dated September 19, 2011, specified that the purpose of this hearing was to consider whether it is in the public interest to make any of the following orders against Gold Vault Metals, LLC, Worth Bullion Group Inc., Brian Darrow, Vincent Zapputo and Mark Walker (collectively the "Respondents"):

- (a) the exemptions under Saskatchewan securities laws pursuant to clause 134(1)(a) of *The Securities Act, 1988* (the "Act") do not apply to the Respondents;
- (b) the Respondents cease trading in any securities or exchange contracts pursuant to clause 134(1)(d) of the Act;
- (c) the Respondents cease acquiring securities or exchange contracts pursuant to clause 134(1)(d.1) of the Act;
- (d) the Respondents cease giving advice pursuant to clause 134(1)(e) of the Act;
- (e) pursuant to clause 134(1)(h) of the Act, Darrow, Zapputo and Walker:
 - (i) resign any position they hold as a director or officer of an issuer, registrant or investment fund manager,
 - (ii) be prohibited from becoming or acting as a director or officer of an issuer, registrant or investment fund manager; or
 - (iii) not be employed by an issuer, registrant or investment fund manager; and

- (f) Darrow, Zapputo and Walker be prohibited from becoming or acting as a registrant, investment fund manager or a promoter pursuant to clause 134(1)(h.1) of the Act;
- (g) the Respondents pay an administrative penalty pursuant to section 135.1 of the Act;
- (h) the Respondents pay financial compensation of up to \$100,000 to each person who or company that has suffered a financial loss caused by the Respondents' contravention of, or failure to comply with Saskatchewan securities laws pursuant to section 135.6 of the Act;
- (i) the Respondents pay the costs of or relating to the hearing pursuant to section 161 of the Act.

The Respondents were bound by the terms of an extending Cease Trade Order (the "Order") dated August 15, 2011 which was valid until February 8, 2012. The Order was extended on January 12, 2012, *sine die*. The Order stipulates the following:

- (a) the exemptions in Saskatchewan securities laws do not apply to the Respondents;
- (b) the Respondents cease trading in all securities and exchange contracts; and
- (c) the Respondents cease giving advice respecting any securities, trades or exchange contracts.

Preliminary Matters:

Mr. Udemgba advised the Panel that settlement discussions were ongoing between Worth Bullion Group Inc. ("Worth Bullion") and Staff, and requested an adjournment of the hearing against all Respondents. The Panel adjourned to consider the matter, and agreed to adjourn the hearing as against Worth Bullion, but decided to proceed with the hearing for Gold Vault Metals Inc. ("Gold Vault"), Brian Darrow ("Darrow"), Vincent Zapputo ("Zapputo") and Mark Walker ("Walker").

Matters between Staff and Worth Bullion were subsequently resolved pursuant to the terms of a Settlement Agreement between Staff and Worth Bullion, and approved by the Panel. The following decision is in respect to the remaining Respondents, Gold Vault Metals, LLC, Brian Darrow, Vincent Zapputo and Mark Walker. In the sections that follow "Respondents" refers to Gold Vault, Darrow, Zapputo and Walker.

The Panel was satisfied that proper notice was given to the Respondents and the hearing could take place in their absence and in the absence of anyone on their behalf.

Evidence Presented:

The panel was presented evidence by [REDACTED] ("REDACTED"), an individual resident in Saskatchewan, and by Brett Wawro ("Wawro"), an investigator employed by the Enforcement Branch of the Saskatchewan Financial Services Commission (the "Commission"). Documentary evidence and testimony of [REDACTED] and Wawro introduced by Staff confirmed the following to the satisfaction of the Panel:

1. Gold Vault maintains a website at <http://goldvaultmetals.com> that sets out the following information:
 - (a) Gold Vault operates out of Fort Lauderdale, Florida in the United States of America;

(b) Gold Vault is a brokerage firm which claims to specialize in leveraged precious metals transactions. The customer acknowledgement document states that "Each transaction made by the customer is a purchase or sale of Physical Precious Metals product for immediate delivery and is not a Futures Contract, Option on a Futures Contract or Securities Transaction".

2. According to the corporate registry for the State of Florida, Gold Vault is a corporation incorporated in Florida.
3. Darrow, Zapputo and Walker held themselves out as representatives of Gold Vault. Their whereabouts are unknown.
4. In early June 2009, Darrow and Zapputo telephoned [REDACTED] on a number of occasions and sent marketing materials to attempt to convince him to open a precious metals trading account with Gold Vault. Darrow and Zapputo proposed that they would use the funds deposited by [REDACTED] to invest in precious metals.
5. On June 19, 2009, after a number of telephone conversations between [REDACTED], Darrow and Zapputo, [REDACTED] agreed to open an account and paid \$20,000 into the account. On June 30, 2009 [REDACTED] paid an additional \$20,000 into the account.
6. Darrow and Zapputo informed [REDACTED] that they had made money for him by trading in the account from June 19, 2009 to July 14, 2009.
7. On July 14, 2009, [REDACTED] completed account opening documentation consisting of: (a) Customer Application and Customer Account Agreement (b) Broker/Dealer Agreement between [REDACTED] and Worth Bullion Group which authorized Gold Vault to act as the broker/agent of record (c) Risk Disclosure Statement and (d) Customer Account Terms and Conditions.
8. On July 16, 2009, [REDACTED] paid an additional \$8,000 into the account.
9. [REDACTED] received regular monthly statements from Gold Vault.
10. In May 2010, Walker telephoned [REDACTED] and introduced himself as [REDACTED]'s new account manager. He advised [REDACTED] that Darrow and Zapputo had been fired. Walker advised [REDACTED] to pay an additional \$4,400 into the account in order to avoid a "margin call". [REDACTED] paid the additional \$4,400 into the account by issuing a cheque in favour of Worth Bullion.
11. In November 2010, [REDACTED] reviewed his monthly account statements from Worth Bullion and noticed discretionary trading in his account. He closed the account and received a refund cheque from Worth Bullion for \$6,842.60.
12. [REDACTED] subsequently contacted the Commission. Wawro investigated the complaint and based on his preliminary findings, on February 15, 2011, the Director of the Securities Division (the "Director") of the Commission issued a temporary cease trade order against, *inter alia*, the Respondents.
13. Wawro testified that none of the Respondents is registered in any capacity with the Commission. He further testified that the Director has not issued a receipt for a prospectus for securities for Gold Vault nor has the Commission or the Director issued an order exempting any of the Respondents from the registration and prospectus requirements of the Act.

14. Both Wawro and [REDACTED] testified that [REDACTED] does not qualify as an accredited investor in Saskatchewan. Wawro also testified that the Respondents have not filed reports pursuant to section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*. [REDACTED] also testified that he was unfamiliar with precious metals trading and margin accounts.
15. Wawro testified that no other exemption under Saskatchewan securities law is available to the Respondents.

Relief Requested

Staff requested that the Hearing Panel order the following:

- (a) the exemptions in Saskatchewan securities laws do not apply to the Respondents;
- (b) the Respondents cease trading in all securities and exchange contracts for and on behalf of residents of Saskatchewan;
- (c) the Respondents cease acquiring securities for and entering into exchange contracts with residents of Saskatchewan;
- (d) the Respondents cease advising residents of Saskatchewan with respect to any securities, trades or exchange contracts;
- (e) Darrow, Zapputo and Walker are prohibited from being employed in Saskatchewan in a capacity that entitles them to trade in securities; and
- (f) the Respondents to pay an administrative penalty of \$25,000 and the costs of the hearing.

Panel's Analysis of the Evidence and Relief Requested:

1. The first task for the Panel was to determine whether the activities carried out by the Respondents constituted one or more of trading in, buying or selling of, or advising in securities. Staff contended that the activities of the Respondents amounted to entering into an investment contract with [REDACTED] and that Section 2(1)(ss)(xiv) of the Act specifies that an investment contract is a security.

The term investment contract is not defined in the Act. Staff submitted that the Supreme Court of Canada in *Pacific Coast Coin Exchange of Canada et al. v Ontario (Securities Commission)* found that a margin contract to purchase a bag of silver coins was an investment contract and thus a security. Notwithstanding language to the contrary contained in documents prepared by the Respondents, the Panel concluded that the circumstances of *Pacific Coast Coin Exchange* were in all material respects identical to the present case and agreed with Staff's contention that in their dealings with [REDACTED], the Respondents were trading in securities on behalf of a Saskatchewan resident.

The Panel concluded that in carrying out the activities described in the Evidence Presented section of this decision:

- the Respondents made a distribution of securities and engaged in trading and advising in securities in Saskatchewan;

- the Respondents are not registered to trade or advise in securities in Saskatchewan and have contravened the registration requirements in section 27 of the Act;

- the Director has not issued a receipt for a prospectus for the securities of Gold Vault and the Respondents have contravened the prospectus requirement in section 58 of the Act;

- the Respondents have not filed reports pursuant to Section 6.1 of National Instrument 45-106 (NI 45-106) , *Prospectus and Registration Exemptions*, claiming any of the exemptions in NI 45-106 and further that the exemptions in Saskatchewan securities laws do not apply to the Respondents.

2. Staff requested that the Respondents be permanently prohibited from trading in, advising with respect to, and acquiring securities for and entering into exchange contracts with, residents of Saskatchewan. Staff further requested that Darrow, Zapputo and Walker be prohibited from being employed in Saskatchewan in a capacity that entitles them to trade in securities.

The Respondents did not respond to the Notice of Hearing and did not attend the hearing to dispute the allegations against them. The Respondents are not residents of Saskatchewan and their livelihoods do not depend on doing business in the Province. In addition, the whereabouts of Darrow, Zapputo and Walker is unknown. In similar circumstances, such as *Seisma Oil Research LLC et al.*, previous panels have ordered permanent bans and the Panel believes that a permanent ban is appropriate in this case.

3. The Panel in *West African Industries et al.* noted that, in its view, one purpose of an administrative penalty is to act as a deterrent to those contemplating not complying with securities laws. The panel in *West African* imposed an administrative penalty of \$25,000 against the respondents and the Staff requested the same penalty for the Respondents in the present matter. Upon review, the Panel has concluded that the actions of the respondents in *West African* matter were significantly more egregious than the actions of the Respondents in the current matter - a greater number of investors and significantly greater sums of money were involved. In addition, the requirements for the use of exemptions from the prospectus and registration requirements in the Act were deliberately ignored, a ruse was devised to attempt to circumvent securities laws; cease trade orders were not complied with, and undertakings to Staff were not carried out. In measuring the actions of the Respondents in this case against the actions of the respondents in *West African*, the Panel is of the view that an administrative penalty of \$25,000 in this matter would be excessive.

That being said, the Respondents were reckless in their disregard for securities laws. They made no attempt to respond to the Notice of Hearing or attend the hearing. They refused to communicate in any way with Staff. This lack of co-operation resulted in additional costs for the Commission and provided no comfort to the Panel that they will comply with Saskatchewan's securities laws in the future. For these reasons, the Panel believes that a significant administrative penalty is required. Considering the circumstances in *West African* and the conduct of the Respondents, in the instant case, the Panel believes that an administrative penalty of \$7,500 for each of the Respondents is appropriate.

4. Pursuant to section 161 of the Act, Staff requested that the Respondents pay the costs of the hearing. The Panel believes that given its findings above, this request is appropriate. Subsequent to the Hearing, Staff submitted a request for costs of \$6643.41. Subsection 1(7) of Appendix A of Regulation 1 sets out the types of costs and the limits of each type of cost that may be awarded by a hearing panel. The Panel reviewed the invoices submitted by Staff and concluded that \$2800 in costs should be assessed against the Respondents.

Decision of the Panel:

Based on the evidence presented, the Panel has determined that it is in the public interest to order that:

(a) pursuant to Section 134 of the Act:

- (i) the exemptions in the Saskatchewan securities laws do not apply to the Respondents;
- (ii) the Respondents cease trading in securities and exchange contracts for and on behalf of residents of Saskatchewan;
- (iii) the Respondents cease acquiring securities for and entering into exchange contracts with residents of Saskatchewan;
- (iv) the Respondents cease advising residents of Saskatchewan with respect to any securities trades or exchange contracts.

(b) pursuant to Section 134 of the Act, Darrow, Zapputo and Walker are prohibited from being employed in Saskatchewan in any capacity that entitles them to trade in securities;

(c) pursuant to Section 135.1 of the Act, each of the Respondents shall pay an administrative penalty in the amount of \$7,500; and.

(d) pursuant to Section 161 of the Act, the Respondents shall pay costs of the Hearing in the amount of \$2800.

Staff did not submit a request for a compensation order for Mr. [REDACTED] and therefore the Panel has made no ruling in this regard.

This is a unanimous decision of the Panel.

Dated this 9th day of May, 2012

[REDACTED]
Paul Robinson
Vice-Chairperson and Panel Chairperson

[REDACTED]
Derrek S. Fahl
Commissioner and Panel Member

[REDACTED]
Mary Ann McFadyen
Commissioner and Panel Member