

DECISION OF A PANEL APPOINTED PURSUANT TO *THE FINANCIAL AND CONSUMER AFFAIRS AUTHORITY
OF SASKATCHEWAN ACT*

In the Matter of
The Securities Act, 1988, ss1988-89, cS-42.2

and

In the Matter of
Jack Louis Comeau
Pinnacle Wealth Brokers Inc.
and
Grasswood Property Finance Ltd.
(the Respondents)

DECISION OF THE HEARING PANEL
CONCERNING STAFF'S MOTION
FOR ADJOURNMENT OF THE HEARING ON THE MERITS

Motion heard: March 2, 2020

Panel: Howard Crofts (Chairperson)
Norman Halldorson (Panel Member)
Peter Carton (Panel Member)

Appearances: Sonne Udemgba (Counsel for Staff of the Financial and Consumer Affairs
Authority of Saskatchewan)

Nathanial Day (Counsel for Staff of the Financial and Consumer Affairs Authority
of Saskatchewan)

Simon Bieber (Counsel for Respondents Jack Louis Comeau ("Mr. Comeau"),
Pinnacle Wealth Brokers Inc. ("Pinnacle"))

Julia Wilkes (Counsel for Respondents Jack Louis Comeau ("Mr. Comeau"),
Pinnacle Wealth Brokers Inc. ("Pinnacle"))

No one appeared on behalf of the Respondent, Grasswood Property Finance
Ltd. ("Grasswood")

Date of Decision: March 12, 2020

BACKGROUND

1. On June 27, 2018 Staff of Financial and Consumer Affairs Authority of Saskatchewan issued a Statement of Allegations detailing contraventions of subsections 27(2), 33.1(1), 55.11(1) and 58(1) of *The Securities Act, 1988* and section 6.1 of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106). As a result of additional information that came to FCAA investigators, the Statement of Allegations was amended and an Amended Statement of Allegations was issued on August 30, 2019.
2. On September 11, 2019, the Hearing Panel met on a conference call with the Registrar of the FCAA, Staff lawyer Ms. Dallas Smith, then legal counsel and staff lawyer having carriage of this file, FCAA investigator Mr. Ken Foster, Simon Bieber and Julia Wilkes and legal counsel for Comeau and Pinnacle. Marty Fletcher, legal counsel for Grasswood. The Amended Statement of Allegations was approved on this call.
3. During this conference call, an Order setting hearing dates to hear the matter was set, commencing on Monday, March 2, 2020 at 9:00 am CST and continuing thereafter on March 3 – 5, March 9 – 13, March 16 – 20 and/or such other dates and times as may be determined by the Hearing Panel. An Order of the Panel dated February 4, 2020 was subsequently made to include Friday, March 6, 2020 in the hearing dates.
4. In November 2019, Ms. Smith informed FCAA that she would be leaving the employ of the Authority. Her employment with the Authority ended in mid-January 2020. With her departure, Staff lawyers Sonne Udemgba and Nathaniel Day assumed carriage of the file.

STAFF'S MOTION FOR ADJOURNMENT

5. On February 14, 2020, Deputy Director of the Authority's Securities Division, Sonne Udemgba filed a Notice of Motion seeking an adjournment of the Hearing to a later date and time no earlier than 9:00 am on May 21, 2020. At the time of filing, the Motion was not accompanied by any affidavit material. Grounds cited in the Motion for the adjournment included the following:
 - (a) Upon assuming carriage of the file, Staff identified several disclosure issues that needed to be addressed and they needed time to do so;
 - (b) Neither the Deputy Director or any other Securities Division counsel had been significantly involved in the file prior to January 2020 and the file required a comprehensive review of thousands of pages of documents and they needed time to do that;
 - (c) Staff of the Authority were in the process of negotiating a settlement with one of the parties in the matter, and if a settlement was reached, the relevance of some evidence and presentation of Staff's case and the length of time for the Hearing would have to be reassessed;
 - (d) Adjournment of the Hearing would provide an opportunity for a settlement and possible streamlining of the issues; and

(e) Adjournment of the hearing would not prejudice the Respondents.

6. Staff requested that the Motion be heard via a teleconference call during the last week of February 2020, prior to the scheduled Hearing start date and time of March 2, 2020 at 9:00 am CST. After reviewing correspondence indicating that the counsel for two of the respondents, Mr. Comeau and Pinnacle, wanted to make representations in person, including by potentially calling witnesses, the Panel directed that the Motion for Adjournment be scheduled to be heard at 9:00 am on March 2, 2020. In addition, the Panel further directed that in the event the motion was denied, the parties were to be prepared to proceed with the Hearing.
7. On Friday, February 28, 2020 at approximately 4:30 p.m., after the Respondents filed response materials which indicated, in part, that there was no evidence to support Staff's application, Staff sent an affidavit in support of its motion to the Respondents and filed it. In addition, at approximately 8:30 a.m. on March 2, 2020, which was the morning that the Motion to Adjourn was scheduled to be heard, Staff sought to file a second affidavit in support of that motion.

RESPONSE FROM RESPONDENTS

8. No response was received from Grasswood to the Motion for Adjournment.
9. Legal counsel for the two other Respondents, Mr. Comeau and Pinnacle, responded on February 27, 2020 with materials that opposed the Motion for Adjournment. A number of reasons for opposing the adjournment were offered, including the following:
 - (a) Despite the delays in receiving some disclosure from Staff, as late as early February 2020, counsel for Respondents were prepared and ready to proceed;
 - (b) As a result of the delays in receiving disclosure, counsel for the Respondents spent considerable time and expense, in the order of \$100,000 incurred by Mr. Comeau, in order to ensure that they would be prepared to proceed with the Hearing, and if it were to be adjourned, the time and expense incurred to date would largely be for nothing for the Respondents and the Respondents would be forced to incur substantial additional expense as their counsel prepares for any new hearing;
 - (c) Mr. Comeau had experienced serious health problems in recent years and currently and if the Hearing were to be delayed, it would add to his stress and contribute further to his poor health resulting in there being a substantial risk that he would not be able to meaningfully partake in a future hearing (or at least not be able to engage to the same degree as he would be if the hearing were to proceed as scheduled);
 - (d) Mr. Comeau had suffered reputational damage and isolation from his community as a result of the allegations and had pushed to have the matters proceed so he could have a resolution of this

proceeding to help him move past this difficult time;

(e) Respondents had a list of witnesses that they anticipated calling and those witnesses were ready and willing to testify during the present Hearing dates. Should the matter be adjourned, these witnesses may not be available at a later date which would jeopardize Mr. Comeau's ability to mount a full and complete defense, and even if they were available, it would be at additional time and expense;

(f) Settlement discussions with any party to this matter are privileged, cannot be disclosed, and cannot be relied upon as a valid reason for a request for an adjournment; and

(g) Staff lawyers that took carriage of this file had been involved in the matter from the outset and had approximately six months to prepare for the Hearing once Hearing dates were set. Regardless of when Staff was informed of Ms. Smith's departure from the FCAA, Staff should have had ample time to replace Ms. Smith with another Staff Lawyer and be prepared to conduct the hearing.

Counsel for Respondents Mr. Comeau and Pinnacle contended that there was substantial evidence of prejudice to the Respondents and therefore an adjournment would be contrary to the public interest in fair proceedings if the Hearing did not proceed on March 2, 2020 as scheduled.

SUBMISSIONS BY STAFF AND THE RESPONDENTS

10. The Motion for Adjournment was presented on March 2, 2020 commencing at 9:00 am CST. FCAA Staff's submissions reiterated the arguments noted in paragraph 5 above.
11. Submissions in opposition to the Motion by Counsel for Respondents Comeau and Pinnacle reiterated the arguments noted in paragraph 7 above.

ANALYSIS AND DECISION

12. In deciding this matter, the Panel relied substantially on Part 10 of Policy 12-602 of the Local Hearing Policy (the "Policy"). Section 10.2 of the Policy sets out factors that a panel might consider in deciding to grant an adjournment, including:

- *Has the party had enough time to submit materials and evidence or to respond?*
- *Will party's right to be heard be prejudiced if it is not given more time?*
- *Was the hearing called on short notice?*
- *Are the matters complex?*
- *Is the party acting in good faith?*
- *Has the party already had adequate time to prepare?*
- *Has the party previously requested adjournments?*
- *Is the party's counsel familiar with the proceedings and the issues?*
- *Would an adjournment greatly inconvenience other parties or adversely affect the orderly conduct of the hearing?*

- *Are there any reasonable alternatives available that do not require adjourning, such as hearing some of the evidence now and the rest later?*

13. After considering the grounds in the Motion, responses from the Respondents, submissions by both parties, and the fact that it is in the discretion of the Panel to make a decision whether or not to grant the Motion to Adjourn, the Panel's decision is to **NOT** grant the Motion. The reasons for the Panel's decision are:

(a) There was sufficient evidence that Mr. Comeau would suffer prejudice should the Hearing not proceed as originally scheduled, including that the subject matter underlying the proceedings dates back to nearly 8 years ago and memories are fading, Mr. Comeau's health issues, Mr. Comeau's window to meaningfully partake in the proceedings is closing, the substantial costs that have been incurred by Mr. Comeau in preparing for the hearing and under the expectation that it would proceed as scheduled, and the fact that Respondent's witnesses are available and ready to appear and might not be at a later date if the matter is adjourned;

(b) Mr. Comeau and his counsel worked diligently to ensure that the matter could proceed and were present and prepared to proceed;

(c) All disclosure issues, which involved Staff needing to remedy a few disclosure deficiencies, were resolved by early February 2020;

(d) Staff were aware of Ms. Smith's impending departure from the FCAA since November 2019 and therefore had more than three months to reassign carriage of the file to other Staff lawyers and prepare for the Hearing scheduled to commence on March 2, 2020;

(e) Staff lawyers that took carriage of the file after Ms. Smith resigned had been involved in the file at various times since the matter was initiated and so Staff lawyers that took carriage of the file came into things with a level of familiarity with the subject matter of the proceedings;

(f) After Ms. Smith tendered her resignation in November 2019, Staff had sufficient time to review the file and decide whether to file a Motion for Adjournment, if one was required, well before February 14, 2020 (the date the motion was actually filed); and

(g) The Hearing was not scheduled on short notice; to the contrary, the March 2020 Hearing dates were originally scheduled by the Panel on September 11, 2019, which gave the parties approximately six months of preparation time;

All things considered, it is the Panel's respectful view that each of the parties, including Staff, had adequate time to prepare for the Hearing. Further it is in the public interest to proceed with the hearing as originally scheduled in order for it to be conducted fairly and in accordance with the principles of natural justice.

14. This is a unanimous decision of the Hearing Panel.

Dated at Regina, Saskatchewan this 12th day of March, 2020.

“Howard Crofts”

Howard Crofts (Chairperson)

“Norman Halldorson”

Norman Halldorson (Panel Member)

“Peter Carton”

Peter Carton (Panel Member)