

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

IN THE MATTER OF
THE SECURITIES ACT, 1988

AND

IN THE MATTER OF
**MK Futures
And
Maitlan Knoke**
(collectively referred to as the “Respondents”)

**DECISION OF THE HEARING PANEL
CONCERNING FCAA’s SECURITIES DIVISION COUNSEL MOTION
FOR ADJOURNMENT OF THE HEARING DATES**

Motion Heard: September 19, 2022

Before: Karen Prisciak, K.C. (Chairperson)
Peter Carton (Panel Member)
Tracey Bakkeli (Panel Member)

Appearances: Mr. Connor Smith (Counsel for the Securities Division of the Financial and Consumer
Affairs Authority, hereinafter “Counsel for FCAA”)

No one appearing on behalf of MK Futures and Maitlan Knoke

Date of decision: December 6, 2022

I. BACKGROUND

1. On October 6, 2022, we advised the parties the adjournment request by Counsel for the FCAA was granted and the Hearing will proceed virtually on February 8 and 9, 2023. We indicated our reasons for adjourning the previously set Hearing would follow. These are the reasons for this adjournment decision.

II. FACTS

2. The First Appearance convened with the attendance of Counsel for the FCAA and the Respondents on May 17, 2022. On behalf of the Respondents, Mr. Knoke requested an adjournment on the basis he was attempting to retain legal counsel. He indicated he required 3-4 weeks to contact a lawyer and had a meeting with a lawyer scheduled for June 2, 2022. He also represented he had been struck with Covid

which impeded him from securing legal counsel. Accordingly, the Respondents' request for an adjournment was granted and June 28, 2022, was scheduled as the next First Appearance.

3. On June 28, 2022, the Panel convened the previously adjourned First Appearance on this matter. Hearing dates were set for September 19 and 20, 2022 ("September Hearing Dates").

4. Although the Respondents had indicated that the June 28, 2022, First Appearance date was acceptable, the Respondents reported technical difficulties and did not appear on this date. Consequently, the September Hearing Dates were set without submissions from the Respondents.

5. Upon receipt of a copy of the Order setting the September Hearing Dates, Mr. Knoke, on behalf of the Respondents, notified the Registrar that he was unavailable for the September Hearing Dates. Mr. Knoke asked that the Hearing be adjourned to a later date. Mr. Knoke provided available dates in October 2022.

6. At the Panel's request, the Registrar notified Counsel for the FCAA of the Respondents' unavailability for the September Hearing Dates and requested Counsel for the FCAA's availability between October 17-28, 2022. Counsel for the FCAA indicated that "the best dates within the proposed" the October 2022 dates "would be October 20th to 28th (inclusive)." At that time, Counsel for the FCAA did not indicate there were dates between October 17-28 that would not work.

7. Based on these communications, and on the understanding that the parties consented to adjourning the September Hearing Dates, the Panel set new hearing dates of October 17th and 18th, 2022 (the "October Hearing Dates"). On July 14, 2022, the Panel issued a new Order setting the October Hearings Dates, which the Registrar sent to the parties.

8. Upon communicating the October Hearing Dates to his anticipated witnesses, Counsel for the FCAA was informed that Investor 2 would not be available for the October Hearing Dates because they conflict with a pheasant hunting trip to South Dakota. Investor 2 indicated he has been making this same opening week pheasant hunting trip to South Dakota with the same group of friends for over twenty years.

9. On July 26, 2022, Counsel for the FCAA notified the Registrar in writing that the October Hearing Dates would not be viable. In this same email communication, Counsel for the FCAA indicated that dates in November 2022 might work and requested the Respondents' availability in November 2022. Mr. Knoke responded to Counsel for the FCAA's emails and indicated that he would provide dates on July 29, 2022.

10. Mr. Knoke did not provide to dates to Counsel for the FCAA on July 29, 2022, or otherwise formally communicate consent to adjourning the October Hearing Dates.

11. It is the Panel's understanding that Mr. Knoke is unavailable in November and December 2022.

12. On August 11, 2022, the Registrar wrote to the parties and informed them that if adjourning the October Hearing Dates was proceeding by consent then a Written Request to that effect needed to be submitted by the parties. The Registrar also informed the parties that if adjourning the October Hearing Dates was not proceeding by consent then a formal Notice of Motion would be required. In either case, the Registrar informed the parties that the Panel's decision of whether or not to adjourn would be guided by the factors enumerated in Part 10.2 of the *Saskatchewan Policy Statement 12-602* (the "*Local Policy*"). Finally, the Registrar notified the parties that if neither a Written Request nor a Notice of Motion for an adjournment was received then the hearing would proceed as scheduled on the October Hearing Dates.

13. On August 18, 2022, Counsel for the FCAA filed a Notice of Motion dated August 16, 2022, seeking an adjournment of the October Hearing Dates. Counsel for the FCAA sent the Notice of Motion along with supporting material including an Affidavit and a Memorandum of Fact and Law to the Respondents using the email address previously provided by, and responded to by, Mr. Knoke.

14. On September 1, 2022, the Registrar sent a Notice of Hearing to the parties indicating that the Notice of Motion to adjourn the October Hearing Dates would be heard on September 19, 2022.

III. SUBMISSIONS OF THE PARTIES

15. On September 19, 2022, Mr. Knoke did not appear on his own behalf or on behalf of MK Futures. The Respondents were not otherwise represented and did not make any submissions. The Panel proceeded to hear the Motion in Mr. Knoke's absence.

16. Counsel for the FCAA summarized the history of this proceeding and noted the three previous adjournments. The first adjournment was to allow Counsel for the FCAA further time to properly serve the Respondents. The next two adjournments were requested by the Respondents for the purpose of obtaining legal counsel and due to unavailability for the September Hearing Dates. These requests were either consented to or unopposed by Counsel for the FCAA. Counsel for the FCAA noted that the Respondents were granted both adjournments.

17. Counsel for the FCAA argued that the requested adjournment would be in the public interest because without it, Investor 2 could not attend the Hearing, and that without the direct evidence from

Investor 2 roughly a third of the allegations in the Statement of Allegations were unlikely to be proven. This, it was argued, would result in artificially lower sanctions.

18. Counsel for the FCAA argued that granting the adjournment would not appear to prejudice the Respondents, but that failing to grant it would effectively resolve a large portion of the allegations in the Respondents' favour without hearing the merits. Thus, Counsel for the FCAA argued that it would be prejudicial not to grant the adjournment.

19. Counsel for the FCAA acknowledged the significant amount of notice he received of the October Hearing Dates and took full responsibility for the confusion about Investor 2's availability on the October Hearing Dates. Counsel for the FCAA also provided details of communications and efforts made to attempt to proceed by consent and of other efforts to ensure that this matter move as swiftly as possible.

20. Counsel for the FCAA submitted that the adjournment was not likely to result in any additional costs to the Authority or to the Respondents.

21. Finally, Counsel for the FCAA suggested that in light of the history of this proceeding and the correspondence between the parties that the Respondents should be required to demonstrate "well founded" "opposition" to this adjournment request.

22. The Panel reserved its decision.

IV. ANALYSIS

23. We are not persuaded by this last argument advanced by Counsel for the FCAA. The fact is we do not have the Respondents' consent for this adjournment. Failing to consent to an adjournment does not require a party to demonstrate that the adjournment is not warranted. Parties are not entitled to an adjournment. In all cases the onus is on the party requesting the adjournment to demonstrate that it would be appropriate in the circumstances. The issue for our consideration in this case is whether to grant the adjournment requested by Counsel for the FCAA. The factors for our consideration include those listed in Part 10.2 of the *Local Policy*, which says:

10.2 Factors Considered

In deciding whether to grant an adjournment, the Panel will consider all relevant factors, including the following:

- (a) whether an adjournment would be in the public interest;
- (b) whether all parties consent to the request;

- (c) whether granting or denying the adjournment would prejudice any party;
- (d) the amount of notice of the hearing date that the requesting party received;
- (e) any prior adjournment requests made and by whom and the reasons for those prior requests;
- (f) the reasons provided to support the adjournment request;
- (g) the cost to the Authority and to the other parties for rescheduling the hearing;
- (h) evidence that the party made reasonable efforts to avoid the need for the adjournment; and
- (i) whether the adjournment is necessary to provide an opportunity for a fair hearing.

24. We are not persuaded by Counsel for the FCAA's arguments that the public interest weighs in favour of granting this adjournment. The challenge with this argument is twofold. First, sanctions are only appropriate *if* allegations are proven on the merits. Counsel for the FCAA's argument presupposes the truth of the allegations which have yet to be tested on the merits. The public has an interest in ensuring that allegations are proven on evidence which is tested through a full hearing before appropriate sanctions are considered. Second, Investor 2 is not the only person with a direct interest in the outcome of this proceeding. There are other investors who have raised allegations in the proceeding and granting the adjournment will necessarily delay an adjudication of their concerns on the merits. Thus, what happens to be convenient for Investor 2 appears on its face to be contrary to the interests of the other investors. We are not persuaded that this factor weighs in favour of granting the adjournment.

25. The advanced notice of the October Hearing Dates and the explanation for the adjournment similarly do not weigh in favour of granting the adjournment. It is unfortunate that the unavailability of Investor 2 for the October Hearing Dates was not communicated when the Registrar initially requested the parties' availability in October. While the Panel appreciates that everyone is entitled to take time away, there is nothing in the evidence filed to indicate that Investor 2's opening week pheasant hunting trip was scheduled before the October Hearing Dates were set. There is no evidence of an irrevocable booking, or of a non-refundable deposit. Rather the explanation offered is tradition, or in other words routine. The unfortunate reality is that legal proceedings are almost always an interruption of people's ordinary routines. Given the advanced notice of scheduled October dates this explanation does not weigh in favour of granting the adjournment.

26. Counsel for the FCAA's arguments regarding prejudice are persuasive. Without Investor 2's testimony Counsel for the FCAA's ability to present a case for the allegations on the merits will be seriously prejudiced. We agree with Counsel for the FCAA that there is nothing on the record to indicate that the Respondent will be prejudiced by granting the adjournment. This factor weighs in favour of granting the adjournment.

27. So too does the history of this proceeding. The Respondents were granted two previous adjournments without the necessity of a formal Notice of Motion for the purpose of obtaining legal counsel and due to unavailability for the September Hearing Dates. This latter adjournment was granted even though neither the Respondents nor legal counsel on their behalf attended at the June 28, 2022, First Appearance to schedule the original September Hearing Dates. Fairness favours granting Counsel for the FCAA a similar adjournment. This factor weighs in favour of granting the adjournment.

28. We agree with Counsel for the FCAA that there is nothing to indicate that costs to the Authority or to the Respondents weigh against granting the adjournment. Although this factor does not necessarily weigh in favour of granting the adjournment, it does not weigh against it.

29. We are satisfied with Counsel for the FCAA's explanation of the efforts made to avoid the need for an adjournment, and to move this matter forward expeditiously and by consent.

30. The persuasive and overriding consideration is the opportunity for a fair hearing. It is our decision that granting the adjournment will ensure a fair hearing. Counsel for the FCAA has indicated that without Investor 2's testimony a third of the allegations are not likely to be proven. Procedures such as having Investor 2 swear an affidavit and be available via teleconference for cross examination run the risk of denying the Respondents a fair opportunity to test the case against them. We are satisfied that Investor 2's presence at the Hearing is required to fairly determine the merits of the allegations against the Respondents. As the evidence indicates this will not be possible at the October Hearing Dates, these dates must be adjourned.

31. We therefore grant the adjournment of the virtual Hearing to February 8 and 9, 2023.

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

Dated at Regina, Saskatchewan this 6th day of December, 2022.


Karen Prisciak, K.C., Hearing Panel Chairperson


Peter Carton


Tracey Bakker