

**In the Matter of
*The Securities Act, 1988, S.S. 1988, C. 5-42.2***

and

in the Matter of

**Alena Marie Pastuch
Teamworx Productions Ltd.
Idendego Inc.
101114386 Saskatchewan Ltd.
101115379 Saskatchewan Ltd.
Cryptguard Ltd.**

(the Respondents)

Decision on Sanctions

The Hearing Panel, appointed by the Chair of the Financial and Consumer Affairs Authority to hear the evidence and arguments in this matter, was comprised of Peter Carton, Gordon Hamilton and Paul Robinson. This decision on sanctions was written by Panel Chairperson Gordon Hamilton, and is the unanimous decision of the Hearing Panel (hereafter the “Panel”).

Background

On July 23, 2014, the Panel issued its decision (the Decision) concerning four allegations of breaches of *The Securities Act, 1988* (the *Act*) involving the Respondents. In the Decision, the Panel concluded that the Respondents had engaged in the alleged breaches, which were:

- i. Contraventions of registration and prospectus requirements in sections 27 and 58;
- ii. Contravention of subsection 44.1 - unfair practice;
- iii. Contravention of section 55.1 – fraud;

- iv. Contravention of subsection 135.7 -- withholding information;

Thereafter, the Panel reserved any decision on sanctions pending further submissions from the parties. It advised the parties in its July 23, 2014 Decision as follows:

86. In keeping with the normal adjudicative approach of the Financial and Consumer Affairs Authority, the issue of sanctions will be dealt with separately. While both parties have already filed written submissions on the appropriate sanction or remedy in these matters, the parties now have the benefit of the Panel's findings on the allegations.

87. Accordingly, the parties will be given the opportunity to file any supplementary submissions within three (3) weeks (i.e. twenty-one days) from the date of this decision before the Hearing Panel considers remedial issues and sanctions arising out of these findings. The sanctions sought against the Respondents are set out in the Notice of Hearing in significant detail.

The Submissions

As requested by the Panel, both parties submitted further written submissions to the Panel within the times outlined in the Decision. It is worthwhile to provide an overview of those submissions.

As indicated in the Decision, the sanctions sought by the Securities Division Staff were largely contained in the Notice of Hearing dated August 27, 2010. That Notice of Hearing contained the following requests to the Panel:

Staff of the Commission will ask the Commission panel to consider whether it is in the public interest to make any of the following orders against Alena Marie Pastuch (Pastuch), Teamworx Productions Ltd., Idendego Inc., 101114386 Saskatchewan Ltd., 101115379 Saskatchewan Ltd. and Cyrptguard Ltd. (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, Pastuch:*
 - (i) *resign her position 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) *Pastuch be prohibited from becoming or acting as a registrant, an investment fund manager or a promoter pursuant to clause 134(1)(h.1) of the Act;*
- g) *the Respondents pay an administrative penalty of up to \$100,000 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.*

In addition to the above sanctions contained in the Notice of Hearing, the Securities Commission Staff submitted more detailed and additional submissions after the Decision was issued. In particular, the initial submission concerning costs included supporting documentation indicating that the “costs of or relating to the hearing pursuant to section 161 of the *Act*” were \$55,399.55. There was a further submission to reflect additional hearing costs, adding a supplementary amount of \$15,778.55. Securities Commission Staff also requested the Panel to consider the amendments to section 135.6 of the *Act* which have removed the maximum limit on financial compensation orders to each person (or company) who has suffered a financial loss as a

result of a contravention or noncompliance with the *Act*. Those statutory amendments to the Panel's governing statute, *The Securities Act, 1988*, occurred after the Notice of Hearing was prepared and served on the Respondents.

The Respondents delivered their written submissions through the principal party within the group of named Respondents, Alena Pastuch. The 50-page submission covered a wide range of topics, many of which were beyond the scope of the remaining issue of sanctions.

Unfortunately, the Respondents' written submissions on sanctions reiterated many of the continuing personal attacks on the Panel that have been common throughout the hearing process in both written and verbal form. These attacks included allegations of fraudulent accusations, prejudgment, defamation, threats, and numerous other improper unsavory statements. These written submissions also continued to claim that the Panel, in adjudicating matters could before it involving the Respondents, had breached both its governing statute and the *Charter of Rights and Freedoms*.

A significant portion of the Respondents' written submissions attempted to challenge the conclusions of the hearing panel as set out in its Decision dated July 23, 2014. At times, the submissions focused on some of the factual findings contained in the Decision. At other times, the Respondents' submissions argued with the Panel's conclusions in relation to the alleged contraventions that were ultimately found to have been substantiated on the evidence presented to the Panel.

The Respondents' written submissions also speculated about the significance of various changes involving the Financial and Consumer Affairs Authority since the commencement of the hearings involving the Respondents. There was speculation that the Saskatchewan government's acceptance of the national securities regulator, the appointment of retired justices to securities hearing panels, and the reduced hearing case load of the Panel Chairperson, were all intricately related to this hearing and the issues raised by the Respondents. Not surprisingly, there was no evidentiary basis provided to support any of these speculative assertions.

The Respondents' submissions attempted, at this late date, to defend themselves from the allegations contained in the Notice of Hearing by claiming that a significant portion of their activities was exempt under the *Act*. The Respondents suggested that the "sophisticated investor" exemption and the "close proximity" exemption (for immediate and extended family) would apply to a large number of investors, who were listed by name in the written submission.

The possible exemptions raised by the Respondents ought to have been presented to the Panel much earlier in the hearing process, when many of these individuals were testifying in front of the Panel. Had the Respondents participated in this stage of the hearing, they could have led evidence through cross-examination of the named individuals to clarify and/or confirm whether some or all of the investors named in the written submissions would qualify under one of the exemptions provided for in the *Act*. Without any evidence aside from the written assertions of the Respondents that these exemptions apply, and given the late stage when this potential and partial defense was raised, the Panel has insufficient facts and evidence to consider or even accept the possibility that the Respondents may be entitled to an exemption in relation to any specific investor.

Similarly, the Respondents challenged some of the information presented to the panel concerning the amount invested and still outstanding by some of the investors. This should have been presented when the witnesses were testifying on their personal investment amounts, rather than submitting it after the witnesses had completed their testimony. In instances where the Respondents challenged the investment amounts, the Panel's relies upon the direct testimony of the witnesses rather than accept the limited information provided by the Respondents.

The Respondents' written submissions clearly addressed and responded to the request of the Securities Commission Staff that the maximum amounts previously set out in section 135.6 of *The Securities Act, 1988* be ignored, given the relatively recent amendments in the legislation. It is sufficient to describe the position of the Respondents to this request as being in opposition to eliminating the maximum amounts previously set out in the governing legislation. There is no reason, given the approach being adopted by the Panel below and the limited relevance of arguments presented by the Respondents, to recite in any detail the specific reasons advanced by

the Respondents on this issue.

Conclusions

The Panel is unwilling to apply the current provisions of *The Securities Act, 1988* on a retroactive basis to this decision on sanctions. It is mandatory that a party be able to make its decision to participate, or not participate, in quasi-judicial proceedings with a clear understanding of the range of sanctions it could face. That is the fundamental rationale for the statutory requirement to serve respondents with the Notice of Hearing in the first place. Respondents would properly be entitled to claim an injustice if the sanctions changed over the course of the hearing such that the penalties could be substantially greater than first outlined in the Notice of Hearing that was served upon them. For this reason, the request of the Securities Division Staff to consider and apply the current provisions contained in section 135.6 is denied.

The Hearing Panel continues to be mindful of the fact that Alena Pastuch has accepted no responsibility for her actions. She continues to blame legal and financial advisors, the FCAA, the investigation staff, the Hearing Panel, and certain investors, among others. At no time did she express remorse for her actions and the impact that her actions had on those who invested in her business activities. She consistently and persistently initiated steps and proceedings that can only be described as a deliberate abuse of process. On that basis, there are no mitigating factors for the Panel to consider in assessing the appropriate sanctions in this case. These factors influenced the Panel's conclusions in determining the appropriate sanctions as set out below.

The Hearing Panel has determined that all of the following sanctions are appropriate and just in the circumstances, and it accordingly orders that:

- a) the exemptions under Saskatchewan securities laws pursuant to clause 134(1)(a) of *The Securities Act, 1988* do not apply to any of the Respondents;
- b) the Respondents, individually and collectively, cease trading in any securities or exchange contracts pursuant to clause 134(1)(d) of the Act;
- c) the Respondents, individually and collectively, cease acquiring securities or exchange

contracts pursuant to clause 134(1)(d.1) of the Act;

- d) the Respondents, individually and collectively, cease giving advice pursuant to clause 134(1)(e) of the Act;
- e) pursuant to clause 134(1)(h) of the Act, Pastuch:
 - (i) resign her position as a director or officer of an issuer, registrant or investment fund manager,
 - (iv) be prohibited from becoming or acting as a director or officer of an issuer, registrant or investment fund manager; and
 - (v) not be employed by an issuer, registrant or investment fund manager;
- f) Pastuch be prohibited from becoming or acting as a registrant, an investment fund manager or a promoter pursuant to clause 134(1)(h.1) of the Act;
- g) the Respondents shall pay an administrative penalty of \$100,000 pursuant to section 135.1 of the Act;
- h) the Respondents shall 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 and failure to comply with Saskatchewan securities laws pursuant to section 135.6 of the Act, and
- i) the Respondents pay the costs of or relating to the hearing pursuant to section 161 of the Act in the nominal amount of \$46,638, notwithstanding that the proven costs that could otherwise be assessed are a significantly larger amount. The Panel does not wish to have hearing costs negatively impact the potential for those persons who suffered a financial loss to receive the compensation to which they are entitled pursuant to other components of this decision.

The Hearing Panel will issue the necessary and particularized order(s) in due course that flows from this decision. The Hearing Panel hereby directs counsel for the Securities Division Staff to confirm whether each individual and corporate investors listed on Exhibit P26 Tab 66 wishes to remain as claimants in the resulting order(s) to be issued as a result of this decision on sanctions. There shall not be any individual claim contained in the resulting order(s) that will exceed either \$100,000 or the amounts set out on Exhibit P26 Tab 66, whichever is lesser. Until the order(s) is finalized and issued, the Hearing Panel retains its jurisdiction over this matter. Once the order(s) is issued, the Hearing Panel will have completed and fully discharged its jurisdictional obligations.

This decision of the Hearing Panel was issued in Regina, Saskatchewan this 18th day of December, 2014.



Gordon D. Hamilton, Panel Chairperson