

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

AND

IN THE MATTER OF

WEST AFRICAN INDUSTRIES INC.
101065273 SASKATCHEWAN LTD.
101076568 SASKATCHEWAN LTD.
LIFE SYSTEMS CORPORATION
ALLAN PETER MOEN
LOUIS SUPERA
(collectively referred to as the Respondents)

DECISION

Hearing Held: October 11 & 12, 2011

Before: Brian Molberg, Chairman
Mary Ann McFadyen
Paul Robinson

(referred to as the Panel)

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

Mr. Allan Peter Moen (referred to as Moen) for himself, 101065273 Saskatchewan Ltd. and 101076568 Saskatchewan Ltd.

No appearance by West African Industries Inc., Life Systems Corporation, Mr. Louis Supera (referred to as Supera) or anyone on their behalf.

Decision dated: A decision was reserved on October 12, 2011. This document dated December 8, 2011 is the decision.

The purpose of this hearing was to consider if it is in the public interest to make a permanent order pursuant to Section 134 of *The Securities Act, 1988, SS 1988, c. S-42.2* (the Act) that:

- (a) pursuant to clause 134(1)(a) of the Act the exemptions under Saskatchewan securities laws 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, Moen and Supera:

- (i) be prohibited from becoming or acting as a director or officer of an issuer, registrant or investment fund manager; and
- (ii) not be employed by an issuer, registrant or investment fund manager;
- (f) Moen and Supera be prohibited from becoming or acting as registrants, investment fund managers or promoters 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 or company that has suffered a financial loss caused by their 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 Panel was satisfied that proper notice was given to the Respondents and the Hearing could take place in the absence of West African Industries Inc., Life Systems Corporation, Louis Supera or anyone on their behalf.

The panel was presented evidence by witnesses: Wesley Berschiminsky, Barbara Pasareno, Dave Deforest, Ron Bowditch, John Tesch, Harvey White - an Investigator with SFSC and Allan Moen. Mr. Udemgba entered into evidence documents as Exhibits S1 – S89.

Background facts presented:

1. West African Industries Inc. (West African) maintains a web site at <http://westafricanindustries.com> (West African Website).
2. The West African Website set out the following information:
 - (a) West African operates out of Sierra Leone in West Africa and Las Vegas, Nevada in the United States of America and holds an 86 square mile concession of property in Sierra Leone;
 - (b) West African owns property in Angola;
 - (c) West African is involved in farming, timber and mining and will mine titanium, niobium, tantalum, iron, silicon, cerium, gold, and silver in future;
 - (d) West African is a registered entity in Sierra Leone.
3. A search of the corporate registries of each of the states of the United States of America and each of the provinces and territories of Canada shows no record of incorporation for West African.
4. 101065273 Saskatchewan Ltd, (273 Sask Ltd) a numbered holding company with a registered office in North Battleford, Saskatchewan was incorporated in the Province of Saskatchewan on

December 30, 2004. The sole officer and director of 273 Sask Ltd is Moen and its most recent annual filing was on January 6, 2011.

5. 101076568 Saskatchewan Ltd, (568 Sask Ltd) a numbered holding company with a registered office in North Battleford, Saskatchewan was incorporated in the Province of Saskatchewan on November 3, 2005. Moen is the sole officer of 568 Sask Ltd. and is a director. Its most recent annual filing was on December 2, 2010.
6. Life Systems Corporation, (Life Systems) is a biomedical company based in Redmond Washington USA. Life Systems maintained a web site at www.lifesystemscorp.com. The Web site is no longer accessible.
7. Between approximately May 2005 and March 2010, Life Systems traded on the OTC Pink Market operated by 2011 OTC Markets Group Inc. under the symbol LSYC. Life Systems is currently listed on the OTC Pink Market, but its securities are not actively traded.
8. During the hearing, staff called five Saskatchewan investors and the staff investigator who investigated the matter. Evidence presented by these witnesses identified numerous financial transactions which are summarized below:
 - (a) Between approximately March 2003 and October 2010, Moen sold financial instruments issued by Life Systems to Saskatchewan investors for a total of approximately \$130,000. During this time, Moen held himself out as Chairman of the Board of Life Systems. The financial instruments were in the form of promissory notes with interest to be paid on a specified date or promises to issue shares of Life Systems.
 - (b) Between about January 2005 and February 2011, Moen and Supera sold financial instruments for approximately \$575,000 to Saskatchewan investors on behalf of West African in more than 100 separate transactions. The investors were advised that they would receive either: (i) a return of the money invested within a specified period, (ii) shares of West African, (iii) a specified number of ounces of gold; or some combination of (i), (ii) and (iii).
 - (c) Between approximately January and June 2005, Moen sold financial instruments of 273 Sask Ltd. to two Saskatchewan investors who jointly purchased the financial instruments for a total of approximately \$52,000 in five separate transactions. Moen advised the joint investors that the funds were to be used for the West African project but that their investments were safe and guaranteed regardless of the outcome of the project.
 - (d) In November and December of 2005, Moen sold financial instruments of 568 Sask Ltd. to two Saskatchewan investors who jointly purchased the financial instruments for approximately \$11,500 in four separate transactions. Moen advised the joint investors that the funds were to be used for the West African project and were promised either a cash payout with interest to be paid on a specified date or shares of 568 Sask Ltd. Moen promised the joint investors that their investment was safe and guaranteed regardless of the outcome of the West African project.

All but one of the Saskatchewan investors described Moen as either a friend or a business associate and none seemed to bear him ill will.

9. None of the Respondents is registered in any capacity with the Commission under the Act.

10. The Respondents have not filed reports pursuant to section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI-45-106) claiming any of the exemptions in NI 45-106.
11. The Director of the Securities Division of the Commission (the Director) has not issued a receipt for prospectus for securities of any of the corporate Respondents.
12. Neither the Commission nor the Director has issued an order exempting any of the Respondents from the registration and prospectus requirements of the Act.

Panel's Analysis of the Evidence:

1. The evidence indicates that Moen was involved with each of the securities transactions that has been identified. The involvement of Supera is less clear. Supera was properly notified of the hearing but was not present at the hearing and was not represented. Some investors said that they had met or may have met Supera when Moen solicited funds from them while other investors were familiar with the name but didn't recall meeting him. During this time Supera held himself out as Chairman and CEO of West African. Supera also sent an email to one of the Saskatchewan investors on behalf of Life Systems.

The Panel concluded that Supera was a principal of West African and Life Systems, participated in some of the securities transactions in Saskatchewan and had knowledge or should have had knowledge of at least several of the other securities transactions. The panel determined that in the interests of protecting Saskatchewan investors, any sanctions applied to Moen should also be applied to Supera.

2. National Instrument 45-106 is a national policy that Securities Administrators in Canada have adopted to provide exemptions to certain classes of persons from the Prospectus and Registration requirements in the securities acts. Two of these exemptions, the Accredited Investor exemption and the Family, Friends and Business Associates exemption are relevant to the matter at hand.

The Accredited Investor exemption provides an exemption to the distributor of securities if in the case of an individual investor the combined financial assets, net income, or net assets of both spouses exceed \$1,000,000, \$300,000 or \$5,000,000 respectively. To use this exemption, the onus is on the issuer of the securities to make a diligent determination that any prospective investor meets one of these tests and report the use of the exemption to the SFSC after funds have been raised. Evidence was presented that Moen did not make this determination or report the use of the exemption.

The Family, Friends and Business Associates' exemption operates in much the same way. The onus is on the issuer to determine that a close personal friendship or a close business association exists between the prospective investor and the issuer, ensure that the prospective investor signs a risk acknowledgement form, and report the use of this exemption to the SFSC after funds have been raised. Advice provided to issuers in the companion policy notes that "an individual is not a close personal friend solely because the individual is: (a) a relative (b) a member of the same organization, association or religious group, or (c) a client, customer, former client or former customer".

The fundamental test of whether or not there is a close personal friendship or a close business association is that the prospective investor must know a principal member of the issuer well enough and for a sufficient period of time to be in a position to assess their capabilities and trustworthiness. The onus is on the issuer to make a diligent determination of whether or not this condition existed when the purchase, or initial purchase in the case of several partial purchases, was made. Evidence was presented that Moen did

not make this determination or report the use of the exemption. The panel noted that clients who have had the same advisor for a number of years may come to regard the advisor as a friend or even a close friend. Whether or not such a relationship develops over time is irrelevant for the purposes of this exemption because the necessary condition that the prospective investor be able to make a determination of the issuer's capabilities and trustworthiness, was not satisfied when the security was purchased.

In his defense to Staff's position that the Respondents had not satisfied the requirements for the use of these exemptions, Moen testified that he believed that each of the investors who testified before the panel was either an accredited investor, close friend or a business associate. He further testified that he was aware of the requirements for the use of the exemptions but considered them to be unnecessary and burdensome paperwork and to have no real value. For these reasons, Moen admitted that he had not satisfied the requirements for either of these exemptions, thereby confirming the Staff's contention. Rather than showing contrition or remorse for his actions, Moen remains defiant and firm in his belief that Saskatchewan's securities laws are unjust and that he is simply an unfortunate victim of bureaucratic excess.

Testimony by the investors suggested the possibility that they may have qualified as Accredited Investors but this was not diligently determined by Moen. By his own admission, Moen knowingly ignored important provisions of Saskatchewan's securities laws. This reflects poorly on his character and suitability for future registration, since it does not appear likely that he would be any more inclined to comply with securities laws in the future than he has been in the past.

3. The second line of defense advanced by Moen was that he was not dealing in securities. He testified that he obtained funds from Saskatchewan investors by way of personal loans to himself secured by promissory notes. He further testified that he did not believe that these personal loans were securities. In some cases, the personal loans were secured by promissory notes that provided for the repayment of principal and interest in a specified time period; in other cases the promissory notes did not specify an interest rate or a period in which the notes would be repaid; and in some cases investors were advised that they would receive either shares of West African or a specified number of ounces of gold. The Staff's position is that these instruments, although described by Moen as personal loans, were in fact securities.

Section 2 (ss) of the Act lists the types of instruments that are considered to be securities. The Panel concluded that the financial instruments issued by Moen meet the definition of securities under Section 2 (ss) (ii), (iv) and (vii) of the Act. The panel also noted that the investors believed that there would be significant profits once the West African venture got underway and that by giving money to Moen they would be entitled to share in these profits. In other words, the investors believed that they were buying securities rather than making a personal loan to help out a friend or business associate. Evidence was presented that Moen described these instruments to investors as "kind of like convertible debentures". In addition, during the course of the hearing, Moen referred to those who he maintained merely gave him money as a personal loan, as "investors".

The Panel concluded that the use of promissory notes to raise funds was simply a ruse to attempt to circumvent Saskatchewan's securities laws. The Panel further concluded that the Respondents traded in securities without being registered and without a receipt for a prospectus thereby contravening sections 27 and 58 of the Act.

4. In response to concerns raised by a Saskatchewan resident and the relatives of two Saskatchewan investors who jointly gave money to Moen for investment purposes, on November 17, 2009, the Director issued a temporary order, ordering, among other things that:

- the exemptions in Saskatchewan securities laws do not apply to the Respondents;
- the Respondents cease trading in all securities and exchange contracts;
- the Respondents cease advising with respect to any securities, trades or exchange contacts.

The Respondents were properly served with copies of the temporary order and the subsequent extending order and Moen acknowledged that he was aware that the Respondents had been cease traded in Saskatchewan. Evidence was presented that the Respondents did not comply with the order and continued to sell securities of West African Industries throughout 2010 and early 2011. These actions are contraventions of section 55.14 of the Act: "No person or company shall fail to comply with any decision of the Commission or the Director made pursuant to Saskatchewan securities laws."

5. The Staff alleges that the Respondents are guilty of making false and misleading statements, of being fraudulent and of being unlawful by taking money intended for West African for their own use. Staff contended that evidence to support these allegations is not in dispute by the Respondents.

Evidence was presented that Moen made a number of statements to investors concerning the status of the project that turned out to be untrue, stated that the investments were "guaranteed" and made other statements that led to "expectations of some pretty handsome rewards".

A printed share certificate for 10,000 preferred shares in Black Sands Inc., issued by Moen to one of the investors was entered into evidence. In testimony, another investor indicated he had purchased 5,000 shares in Black Sands. Moen admitted that Black Sands Inc. has never existed.

Evidence was also introduced that Moen cashed cheques from investors that were intended for the project and sent money collected from investors to his son and to Supera. Moen admitted that he used funds collected from investors for his own purposes but that he was entitled to do so as investors understood that 10% of investor money collected was to be used to cover his expenses. However, when interviewed by Staff, one of the investors indicated surprise that Moen was taking 10% of the money collected for his own use. Moen had no written agreement with investors to substantiate his claim to 10% of the money he received.

Documents were entered into evidence confirming money was transferred from one investor into another investor's holding company which subsequently wire-transferred funds to Supera in Nevada.

In the Panel's view, these actions were at best questionable.

Although he held himself out as the Chief Financial Officer of West African, he did not produce financial records or reports of any description; provided no written reports to investors outlining the progress of the venture; produced no records of payments for services rendered; provided no evidence of construction activity or reports or evidence of any other activity that would be indicative of a business operation. He indicated he provided verbal progress reports to investors claiming that the nature of doing business in 'that part of the world' is not conducive to being able to provide documented financial records. When questioned about how he did in fact keep track of finances, he offered 'we keep track as best we can'. During the course of the investigation, Moen undertook to provide much of this information to the Staff. However, with the exception of a 2004 geological report, he failed to comply with these undertakings.

6. Moen has been consistent in his disregard for Saskatchewan securities laws:

- he has never registered under the Act in any capacity;
- he ignored the requirements for the use of the Accredited Investor and Family, Friends and Business Associates exemptions;

- he devised the promissory note ruse to attempt to circumvent Saskatchewan's securities laws.
- he repeatedly ignored the Cease Trade Orders issued by the Commission in violation of Section 55.14 of the Act

As enunciated by the Director in her decision in *The Matter of Barry Joseph Folk*, the Commission requires high standards of honesty and integrity of those who work in the securities industry. The Panel has concluded that Moen does not meet these standards. His blatant disregard for Saskatchewan securities laws, his informal arrangements regarding his own compensation, his absence of documentation and record keeping, and slipshod reporting to investors are reprehensible and not to be tolerated in the marketplace.

7. In its Brief of Law and Argument submitted at the hearing, staff requested that the Respondents pay the maximum administrative penalty of \$100,000 as provided for in the Act as well as the costs of the hearing. Staff argued that "imposing an administrative penalty and ordering them to bear the costs of the hearing will compel them to comply with Saskatchewan securities laws."

Section 135.1 of the Act empowers the Commission to impose administrative penalties if it is satisfied that a person or company has contravened or failed to comply with securities laws, a written undertaking made to the Director or the Commission or if it considers it to be in the public interest to make the order.

It seems to the Panel that the primary purpose of administrative penalties is to ensure future compliance to the rules by registrants who are guilty of wrongdoing not serious enough to require banishment from the industry. The Panel also believes that administrative penalties and/or suspension from the industry act as effective deterrents to those contemplating not complying with securities laws. In instances where the violations of the Act have been particularly egregious, it is in the public interest to order that an administrative penalty be paid even when the registrant is banished from the industry.

In determining the amount of the administrative penalty, the Panel considered these factors – the disregard for Saskatchewan securities laws, the length of time of suspension, the number of investors involved and the extent of the harm done to each investor.

Section 161(1) of the Act empowers the Commission to "order a person or company to pay the costs of or related to the hearing if the Commission is satisfied that the person or company whose affairs were the subject of the hearing has not complied with any provision of the: (a) this Act; (b) the regulations; (c) a decision of the Commission; or"

Staff argued that the main purpose of awarding costs in administrative proceedings is to indemnify a party for the expenses to which it has been put as a result of the litigation or proceeding in question. Staff further argued that the deliberate actions of the Respondents are further justification for awarding costs in this case. Subsequent to the hearing, Commission staff submitted an estimate of \$46,628.54 for costs. The estimate included estimates of the cost of court reporting, photocopying, other costs of conducting the investigation and hearing as well as an allowance for the salaries of staff involved in the investigation and hearing.

The Panel believes that a reasonable estimate of only those costs that could have been avoided had the non-compliance not occurred should be considered when determining costs. Thus the Panel believes that salary costs for permanent staff should not be included in the determination of these costs but that the Respondents share of all other avoidable costs, including the direct costs of the hearing, should be awarded to the Commission. In determining the Respondents share of these costs, the Panel took account of the

Respondents statutory right to appear at a hearing to respond to allegations against them as well as the extent to which the Respondents co-operated during the investigation and hearing.

Decision of the Panel:

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

(a) make an order pursuant to Section 134 of the Act that, until December 31, 2016:

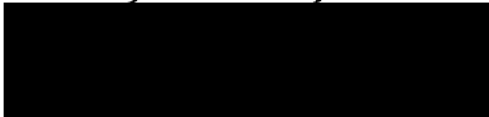
- (i) the exemptions in Saskatchewan securities laws do not apply to the Respondents;
- (ii) the Respondents cease trading in all securities and exchange contracts;
- (iii) the Respondents cease acquiring securities and entering into exchange contracts, except for their own account or that of their spouse or spousal equivalent;
- (iv) the Respondents cease advising with respect to any securities, trades or exchange contracts; and,
- (v) Moen and Supera are prohibited from becoming or acting as directors or officers of an issuer, registrant or investment fund manager; or from being employed in the selling of or advising on securities or exchange contracts by an issuer, registrant or investment fund manager;

(b) order the Respondents pay an administrative penalty of \$25,000 pursuant to Section 135.1 of the Act; and,

(c) order the Respondents pay costs of \$10,000 pursuant to Section 161 of the Act.

The Panel has not made a decision concerning possible financial compensation pursuant to section 135.6 of the Act. The Panel will consider a request by the Staff to reconvene the Hearing to rule on this matter, if such request is received by the Secretary to the Commission by March 31, 2012.

Dated this eighth day of December, 2011


Brian Molberg, Chairman


Mary Ann McFadyen


Paul Robinson