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COR#02/022

Application to Adjourn the Hearing and to Set Aside Temporary Orders

Davis & Davis Personal and Professional Development Seminars Ltd., Lauron Enterprises Inc., 3021310 Nova Scotia Inc., Laurie Harriet Davis, Ronald G. Davis and Betty MacArthur

Sections 161(1) and 171 of the *Securities Act*, RSBC 1996, c. 418

Ruling

Background

[para 1]

On December 1, 2000, the Executive Director notified Davis & Davis Personal and Professional Development Seminars Ltd., Lauron Enterprises Inc., 3021310 Nova Scotia Inc. and The Personally Empowered People Program, a.k.a. The PEP Program, Laurie Harriet Davis, Ronald G. Davis and Betty MacArthur that the Commission would hold a hearing under section 161(1) of the *Securities Act*, RSBC 1996, c. 418, on December 14, 2000, to determine whether it is in the public interest to make orders against them under the Act.

[para 2]

In summary, the notice alleged that between November 15 and 20, 2000:

1. the respondents were attempting to establish a business for the purpose of soliciting residents of British Columbia to invest in a self-help course named the Personally Empowered People Program (the PEP Program),
2. the business, which the respondents had already been conducting in Nova Scotia and Prince Edward Island, also involved the selling of securities in some or all of the corporate respondents,
3. potential investors are recruited through newspaper ads looking for people who want to work from home or who are interested in careers in human development,
4. potential investors are sold membership packages that include workbooks, videos, training manuals and other miscellaneous support tools that purportedly help them sell PEP packages to others,
5. once individuals become PEP members, they are presented with an opportunity to purchase "investment blocks" in one of the corporate respondents with promised returns of up to 25 per cent annually,
6. on April 29, 1999, the Nova Scotia Securities Commission issued a temporary order directing Ronald Davis, Laurie Davis and the corporate respondents to cease trading in the PEP Program,

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7. on July 27, 1999, Laurie Davis, Ronald Davis, and the corporate respondents were charged in the provincial court of Prince Edward Island with trading in securities between February 11, 1999 and March 25, 1999, contrary to the prospectus and registration requirements of that province's securities legislation,
8. MacArthur, Ronald Davis and Laurie Davis made presentations to residents of British Columbia, in both public and private forums, for the purpose of soliciting investments in the PEP Program,
9. none of the respondents was registered under the Act to trade or advise in securities, and
10. the respondents may be trading and advising in securities in British Columbia contrary to sections 34 and 61 of the Act.

[para 3]

Based on these allegations, the Executive Director on December 1, 2000, issued temporary orders under section 161(2) of the Act prohibiting:

1. all persons from trading in the securities of the corporate respondents and the PEP Program; and
2. the individual respondents from using the statutory trading exemptions, acting as directors or officers of any issuer and engaging in any investor relations activities.

[para 4]

On December 14, 2000, Commission staff applied to extend the orders. The respondents did not produce any evidence on December 14, 2000. On the basis of evidence produced by Commission staff, the Commission varied the temporary orders by removing reference to the PEP Program and then under section 161(3) of the Act, extended the temporary orders until the hearing is held and the decision rendered.

[para 5]

The Commission adjourned the matter to March 15, 2001 to fix a date for the hearing. The hearing was subsequently adjourned by consent to January 7, 2002.

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[para 6]

On March 15, 2001, Commission staff served Laurie Davis and MacArthur with summonses, issued under section 144 of the Act, to attend before an investigator on April 4 and 5, 2001. Each was given \$20 in conduct money. MacArthur lives in Surrey, British Columbia. Laurie Davis lives in Brookfield, Nova Scotia. Neither MacArthur nor Davis appeared.

Nature of this application

[para 7]

Commission staff applied to adjourn the hearing until:

1. the trial of the respondents (except MacArthur) in Prince Edward Island provincial court is completed, and
2. Laurie Davis and Betty MacArthur comply with summonses they received to attend before a Commission investigator.

[para 8]

Commission staff argue that it is not appropriate to proceed with the hearing until the trial in Prince Edward Island is concluded and that they cannot complete their investigation until they have interviewed Laurie Davis and MacArthur.

[para 9]

The respondents argue the trial in Prince Edward Island is irrelevant to the timing of the hearing in this matter. MacArthur and Laurie Davis argue that they were not given the appropriate amount of conduct money with the summons requiring them to attend before the investigator and therefore they are not obliged to attend before the investigator. The respondents have applied to have the temporary orders set aside.

[para 10]

In support of their application and arguments, the respondents filed affidavits of MacArthur, Laurie Davis and Ronald Davis, each sworn on January 15, 2002, as well as a statutory declaration of Cathy Duchet sworn on May 15, 2001.

[para 11]

Commission staff ask to cross-examine these individuals on their affidavits before the Commission considers this evidence to determine whether to set aside the temporary orders. In the meantime, Commission staff argue that it is necessary and in the public interest for the temporary orders to remain in effect.

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[para 12]

Under section 161(3) of the Act, the Commission, if it considers it necessary and in the public interest, may, without a hearing, make an order extending a temporary order until a hearing is held and a decision is rendered.

[para 13]

The question before us is not whether it is necessary and in the public interest to extend the temporary orders initially made against the respondents on December 1, 2000. On December 14, 2000, under section 161(3) of the Act, the Commission already extended the temporary orders until a hearing is held and a decision is rendered.

[para 14]

Before the temporary orders can be varied or set aside under section 171 of the Act, the Commission must be satisfied that it would not be prejudicial to the public interest. The respondents argue that the affidavits of MacArthur, Laurie Davis and Ronald Davis and the statutory declaration of Cathy Duchet provide an evidentiary basis for setting aside the temporary orders. Commission staff wish to challenge this evidence by cross-examining the affiants.

[para 15]

In our view, it would be premature to make any determinations under section 171 of the Act until Commission staff cross-examine the affiants on their affidavits.

[para 16]

Accordingly, we adjourn the application to set aside the temporary orders until this occurs. The temporary orders remain in effect. If the respondents wish to pursue their application to set aside the temporary orders, they can advise the Secretary to the Commission when it is convenient for them to attend before the Commission to be cross-examined on their affidavits and a new date can be set for this application.

[para 17]

Further, we agree with Commission staff, that they should be given a reasonable opportunity to complete their investigation, including the interviews of Laurie Davis and MacArthur, before fixing a date for the hearing under section 161(1) of the Act.

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[para 18]

As for the interviews of Laurie Davis and MacArthur, they argue that the appropriate amount of conduct money did not accompany the summonses they received. Commission staff say they have not been able to calculate the actual amount of conduct money to be advanced to Laurie Davis, since the actual amount is contingent on her informing staff of her choice of flight, hotel and meal selection. She has yet to do this. Commission staff argue that they are not obliged to provide these respondents with their conduct money upon service of their respective summonses.

[para 19]

Section 9(2) of the *Securities Regulation*, BC Reg. 196/97, provides that a person summoned under section 144 of the Act, must be paid the fees and allowances that a witness summoned to attend before the Supreme Court is entitled.

[para 20]

The British Columbia *Rules of Court* stipulate that a party to a proceeding is eligible to be compensated for their reasonable travel, meal and accommodation expenses for their attendance at a proceeding. Schedule 3 of the *Rules of Court, Fees Payable to Witnesses* [en. BC Reg. 55/93, s. 44] states that in all cases in which a witness is required to attend an examination, hearing or trial, the daily witness fee and fees for travel, meals and preparation are payable, and shall, unless otherwise ordered, be tendered in advance by the party requiring the attendance of the witness. Schedule 3 goes on to provide the daily witness fee and how travel fees, meal, accommodation, preparation and other allowances are to be calculated.

[para 21]

As witnesses and parties to the proceeding, Laurie Davis and MacArthur are entitled to receive, in advance, their reasonable travel, meal and accommodation expenses. While it appears that MacArthur, who resides in Surrey British Columbia, received adequate conduct money with her summons, the same cannot be said for Laurie Davis.

[para 22]

Laurie Davis, who resides in Nova Scotia, will clearly incur significant travel and accommodation expenses to attend British Columbia pursuant to the investigator's summons. Once Davis advises Commission staff of her intended travel plans, these expenses should be tendered, or travel arrangements made, in advance of Davis attending under the summons.

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[para 23]

We will leave it up to the parties to settle the arrangements for the summonses.

March 8, 2002

[para 24]

For the Commission

Joyce C. Maykut, Q.C.
Vice Chair

Joan L. Brockman
Commissioner

John K. Graf
Commissioner