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QuickEx Inc., David J. Rogerson, Gregory Yanke, Stephen Spink and Paul Trennum

Section 161 of the *Securities Act*, RSBC 1996, c. 418

Hearing

Panel	Robin E. Ford	Commissioner
	Marc A. Foreman	Commissioner
	Robert J. Milbourne	Commissioner
Date of Decision	December 31, 2004	

Written Submissions Made By

Patricia A.A. Taylor Jodie Puscas	For QuickEx Inc., David J. Rogerson, Stephen Spink and Paul Trennum
H. Roderick Anderson	For Gregory Yanke
Joseph A. Bernardo Alan E. Keats	For the Executive Director

Decision

Introduction

- ¶ 1 In a notice of hearing issued October 19, 2004, commission staff asked the commission to determine whether it is in the public interest to make orders under the *Securities Act* against QuickEx Inc, David J. Rogerson, Gregory Yanke, Stephen Spink and Paul Trennum.
- ¶ 2 Also on October 19, staff issued temporary orders against the respondents. After a hearing on November 2, 5, and 8 (the extension hearing), on November 16, 2004, we ruled that there was insufficient evidence on which to find a prima facie case of breach of the Act, and declined to extend the temporary orders against the respondents.
- ¶ 3 On November 8, we adjourned the hearing to December 7, 2004 to set a date for the hearing of the allegations in the notice of hearing.
- ¶ 4 On November 26, 2004, the respondents QuickEx, Rogerson, Spink and Trennum applied for immediate dismissal of the allegations contained in the notice of hearing.

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¶ 5 Staff wrote to us on the same day suggesting that we had not ruled on whether the respondents' conduct was contrary to the public interest, opposing immediate dismissal and asking the commission to invite submissions on the respondents' application. On December 3, we varied our ruling on the extension of temporary orders to make clear that our finding of November 16 extended to conduct contrary to the public interest. We invited written submissions on the application to dismiss by commission staff and by the respondent Yanke and adjourned the hearing scheduled for December 7. Staff made submissions on December 8, 2004. The respondents replied on December 13. The respondent Yanke said he relied on the submissions of the other respondents and joined in the application to dismiss. Staff made some clarifying submissions in reply on the same day.

Decision

¶ 6 This case presents us with an unusual set of circumstances. Commission staff began an investigation of QuickEx in April 2004. Their investigation revealed information of concern to staff, but they did not contact any of the respondents for an explanation. The executive director considered that the evidence was sufficient to support both a notice of hearing and temporary orders, and issued them on October 19, 2004.

¶ 7 In the extension hearing, staff said that they did not intend to introduce further evidence and they were ready to proceed, not only on the application to extend the temporary orders, but also on the hearing of the allegations in the notice of hearing. The respondents objected to this on the grounds they had not received due and sufficient notice that the full hearing would take place on November 2. We decided to hear only the application to extend the temporary orders. Staff introduced all their evidence. We concluded that the evidence did not support a prima facie case of breach of the Act or conduct contrary to the public interest. As noted above, we declined to extend the temporary orders.

¶ 8 The respondents say that since staff have put in all their evidence and failed to prove a prima facie case in the extension hearing, they cannot prove a case on the higher test of balance of probabilities.

¶ 9 Staff have not applied to introduce further evidence. Staff have asked us to direct QuickEx to report to the commission on whether it has implemented its promised expansion. This we decline to do. It is for staff to investigate and put evidence before us.

¶ 10 We agree with the respondents. Accordingly, we find that there is insufficient evidence to prove the allegations in the notice of hearing. Consequently, we make no orders against the respondents under sections 161, 162 or 174 of the Act.

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Variation of decision

- ¶ 11 Staff have questioned our variation of our ruling of December 3, 2004. They say that the variation resulted from a reconsideration of the ruling not to extend the temporary orders. The variation did not result from a reconsideration; it was simply to provide greater certainty about our ruling of November 16. Accordingly we do not invite submissions on it from the parties and we will not vary or revoke it.

Reasons for decision

- ¶ 12 On November 16, we issued our ruling declining to extend the temporary orders without reasons. In response to staff's apparent request for guidance in their submission of November 26, on December 3, we decided to provide reasons. In their submission of December 13, staff told us that they do not wish to receive reasons. Accordingly, since no party has requested reasons for our decision of November 16, we will not provide them.
- ¶ 13 December 31, 2004

Robin E. Ford
Commissioner

Marc A. Foreman
Commissioner

Robert J. Milbourne
Commissioner