

BRITISH COLUMBIA SECURITIES COMMISSION  
*Securities Act, RSBC 1996, c. 418*

Citation: Re Forum National, 2020 BCSECCOM 398

Date: 20200929

**Forum National Investments Ltd. and Daniel Clozza<sup>1</sup>**

<b>Panel</b>	Suzanne K. Wiltshire	Commissioner
	George C. Glover, Jr.	Commissioner

**Submissions Completed**    September 21, 2020

**Date of Ruling**                      September 29, 2020

**Appearing**

James Torrance	For the Executive Director
Chris Cairns	

Jeff Bowser	For Forum National Investments Ltd.
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Patricia Taylor	For Daniel Clozza
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**Ruling**

- [1] During the ongoing merits hearing in this matter, Daniel Clozza made an application on September 17, 2020 (the Application) to become a representative for Forum National Investments Ltd. (Forum). In an earlier email on September 4, 2020, Jeff Bowser, the representative for Forum since 2014, had indicated it was Forum's intention to also have Clozza be a representative of Forum. No one appeared at the merits hearing on behalf of Forum until September 18, 2020, when Bowser appeared for the first time and acknowledged he was aware that Clozza was going to make the Application and confirmed that Forum supported the Application. The panel considers the Application, although brought by Clozza, to be a Forum application.
- [2] In making the Application, Clozza stated that he was an officer and director of Forum and that it was his intention to come forward as the representative of Forum. He stated that he intended to conduct questioning but that he would continue to need the assistance of Bowser in preparation and bringing up documents because he was inexperienced in that area. He stated that the intention was to add an additional representative so there would be two representatives for Forum.

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<sup>1</sup> The style of cause in the amended notice of hearing in this matter was: Forum National Investments Ltd., Daniel Clozza, Robert Logan Dunn, Douglas Corrigan and Mosaic Holdings Ltd. On March 11, 2020 the executive director entered into a settlement agreement with Robert Logan Dunn and Mosaic Holdings Ltd. and discontinued proceedings against them. On August 14, 2020, the executive director discontinued proceedings against Douglas Corrigan.

- [3] In response to panel questions as to his role if he were to become a representative of Forum as compared to that of Bowser, Clozza provided the following clarifications:
- He would ask all questions on behalf of Forum in cross-examination of the executive director's only witness (ED's Witness), be the person to speak on Forum's behalf, and be Forum's representative for all purposes going forward.
  - The tribunal would not be dealing with Bowser anymore and Bowser would cease to be the representative of record.
  - Bowser would only attend proceedings to assist Clozza with the "mechanics" of dealing with documents.
- [4] The executive director opposed the Application orally on September 17 and provided a written response to the Application early on September 18, submitting, in summary, that:
- In applying its discretion to permit individuals who are not lawyers to represent companies in Commission proceedings, a panel must do so in the public interest to ensure that the hearings continue to be conducted in a fair and efficient manner.
  - To allow the Application would lead to an unfair and inefficient process because:
    - i. Clozza, as a respondent himself in this matter, has, through his own counsel, already cross-examined the ED's Witness and is now seeking to cross-examine the ED's Witness twice; and
    - ii. the Application is an attempt to use the Commission's hearing process for the improper purpose of gathering information for a civil claim filed by Clozza, Forum and a former respondent in this matter against the Commission, the ED's Witness and other current and former employees of the Commission and to act in an improper manner towards the ED's Witness.
  - There is no prejudice to Forum if Bowser continues to be Forum's representative and there is no reason for Clozza to replace Bowser.
- [5] On September 18, 2020, the panel directed that the Application would continue as a hearing in writing.
- [6] On September 21, 2020, Forum filed its written reply arguing that: Forum has a right to decide who is best suited to represent it during a hearing; Clozza is more knowledgeable with respect to the matter and has been in attendance during the hearing on the merits, while Bowser is only a part-time director of Forum with other responsibilities and he is not available to attend the hearing on the merits on many of the days scheduled; and, it will be more efficient to have Clozza become Forum's representative.

- [7] On September 21, 2020, counsel for Clozza, acting on behalf of him personally as a respondent in this matter, filed a written submission in support of the Application.
- [8] The panel has considered the Application and all submissions, both oral and written, made in respect of the Application.
- [9] Section 8.1 of BC Policy 15-601 *Hearings* provides that a party must apply to be represented by a person other than a lawyer.
- [10] We accept that Clozza is, as he stated, an officer and director of Forum.
- [11] While Clozza initially framed the Application as being to add himself as a representative of Forum, he also agreed that if he were to be appointed as Forum's representative, he would be the person representing Forum for all purposes going forward and that Bowser would cease to represent Forum. Additionally, Forum in its reply submission indicated Bowser had limited availability to continue as Forum's representative due to other responsibilities.
- [12] The panel notes that Bowser has in fact not participated in any proceedings related to this matter since a hearing management meeting held on March 27, 2020 and has since that time until his email of September 4, 2020, failed to acknowledge or respond to the Commission Hearing Office's communications to him in his capacity as Forum's representative.
- [13] The panel sees no need for Bowser to continue as a representative of Forum if Clozza is appointed. To the extent Bowser is available, he does not need to be Forum's representative in order to assist Clozza with preparation and the mechanics of dealing with documents. The panel has therefore considered the Application to be an application to replace Bowser with Clozza as Forum's representative going forward.
- [14] The executive director submits the Application as originally framed is directed to Clozza's being able to cross-examine the ED's Witness twice and may be an attempt to use the Commission's hearing processes for improper purposes in relation to the civil claim proceeding that Clozza and others have filed.
- [15] The civil claim proceeding is a separate and independent proceeding. The purpose of the merits hearing before the panel is to make determinations with respect to the allegations against the remaining respondents set out in the June 15, 2018 Amended Notice of Hearing in this matter. The concerns noted by the executive director in his submissions are also matters of concern to the panel. We remind all parties that questions put to any witness testifying in the merits hearing before the panel must be relevant to the allegations made in the Amended Notice of Hearing. If they are not, they will not be permitted. Unnecessary repetition of questions already asked and answered in the lengthy cross-examination of the ED's Witness by counsel for Clozza, acting on behalf of him personally as a respondent in this matter, will not be permitted as they would be a waste of the panel's time and Commission resources. To cross-examine a witness in Commission proceedings for an unrelated purpose is improper. All witnesses in Commission proceedings are to be treated with courtesy and respect. As stated by the Supreme Court of Canada in *R. v. Lyttle*, 2004 SCC 5 (CanLII), [2004] 1 SCR 193, in cross-examination, "counsel are bound by the rules of relevancy and barred from resorting to harassment, misrepresentation,

repetitiousness or, more generally, from putting questions whose prejudicial effect outweighs their probative value.” [citations removed]

[16] The panel’s objective is to conduct proceedings in this matter in a fair and efficient manner. Fairness includes permitting Forum to change the individual who will represent it if such request is reasonable and not an abuse of the Commission’s processes. In the present case, permitting a different director and officer of Forum to represent Forum in place of Bowser appears to the panel to be a reasonable request, provided that person conducts themselves appropriately during the proceedings and limits their questioning of any witness to the allegations made against Forum in the Amended Notice of Hearing.

[17] The panel rules that:

1. Clozza will be the sole representative of Forum, effective the date of this ruling;
2. Bowser will cease to be a representative of Forum, effective the date of this ruling; and
3. Clozza is directed to immediately provide to the Hearing Office and to the other parties notice of the address to which the Commission and other parties may send documents, notices and other communications to him as Forum’s representative.

September 29, 2020

**For the Commission**

Suzanne K. Wiltshire  
Commissioner

George C. Glover, Jr.  
Commissioner