

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

Citation: Re Mohamed, 2024 BCSECCOM 369

Date: 20240826

**Tajkarim Mohamed, Lacie Holdings Limited,
Space Cloud Empire Limited, formerly known as CE Star Holdings Limited,
(together, the Mohamed Group) and**

**Aly Ismail, NH Transcendental Business Solutions Inc.,
Green Stream Botanicals Corp.,
(together, the Ismail Group)**

(collectively, the Respondents)

Panel	James Kershaw Marion Shaw Karen Keilty	Commissioner Commissioner Commissioner
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Submissions completed July 9, 2024

Ruling date August 26, 2024

Parties

Mila Pivnenko For the Executive Director

Aly Ismail For himself

Thuy Hanh Nguyen For NH Transcendental Business Solutions Inc. and
Green Stream Botanicals Corp.

Ruling

I. Introduction

- [1] A Notice of Hearing was issued against the Respondents on October 24, 2023, alleging that the Mohammed Group and Ismail Group acted in furtherance of trades of approximately \$12.2 million worth of securities, for which they received approximately \$1 million in finder's fees, without being registered.
- [2] The four-day hearing of this matter is scheduled for October 29 to 31 and November 8, 2024.
- [3] On April 5, 2024, Aly Ismail (Ismail) applied to the Commission to be severed from the Mohamed Group for the purposes of the hearing and to be afforded unspecified medical accommodations.
- [4] On April 5, 2024, Thuy Hanh Nguyen (Nguyen) applied to the Commission for NH Transcendental Business Solutions Inc. (NH) and Green Stream Botanicals Corp. (GSB) to be severed from the Mohamed Group for the purposes of the hearing and for Nguyen to be afforded unspecified medical accommodations.

- [5] On April 8, 2024, the hearing office of the Commission (Hearing Office) sent an email to the parties confirming that that the panel would treat the Ismail and Nguyen letters as preliminary applications under section 3.4 of BC Policy 15-601 *Hearings* and directed Ismail and Nguyen to file more fulsome applications by April 26, 2024. That email stated that “the Commission expects applicants to provide compelling evidence in affidavit form to support their applications”.
- [6] A pre-arranged in-person hearing management meeting was held on April 9, 2024. NH and GSB did not appear. Those in attendance were advised, further to the email sent to the parties the previous day, that the Ismail and Nguyen letters would be treated as applications both to sever and to be afforded unspecified medical accommodations.
- [7] On April 11 2024, Nguyen sent an email to the Commission stating that she was unable to provide a fulsome application by April 26, 2024, due to personal commitments and requested the deadline be extended.
- [8] A letter summarizing the hearing management meeting and intervening communication was sent to the parties on April 12, 2024. In that letter:
- a) Ismail was advised that evidence previously provided by him to the Hearing Office was not medical evidence relevant to this proceeding and was not sufficient grounds to support his request to grant accommodations;
 - b) The parties were provided with links to:
 - i. BC Policy 15-601, *Hearings*
 - ii. The Hearings page on the Commission’s website, containing links to:
 - 1. Representing Yourself - Resources for Self-Represented Respondents
 - 2. Hearing Procedures
 - 3. Guidelines for Preparing Documents to be Filed with the Tribunal
 - 4. Hearing Standards
 - c) The parties were advised that:
 - i. Ismail and Nguyen’s fulsome application submissions including documentary evidence from qualified medical practitioners sufficient to support any accommodation requests made relating to a medical condition that could limit their respective abilities to participate in this hearing were now due by 4:00 pm on May 17, 2024; and
 - ii. The executive director’s and Mohamed Group’s response submissions were due by 4:00 PM on May 31, 2024, and any reply by the applicants was due by 4:00 pm on June 14, 2024.

- [9] On May 10, 2024, Nguyen sent an email to the Hearing Office stating that she would be unable to meet the deadline of May 17, 2024, due to pending major surgery and would advise when she would be available again.
- [10] On May 13, 2024, the panel chair responded to Nguyen by email with copies to all Respondents stating that the panel was treating such email as an application by her to extend the time to make submissions relevant to her severance and medical accommodation applications. Though some medical documentation unrelated to the surgery had been provided to the Hearing Office by Nguyen, the chair's response made clear that an application for extension of time for delivery of submissions required more than an email stating that position and, given this application was made in relation to pending surgery, the chair requested Nguyen provide the Hearing Office and the parties prior to 4:00 pm on May 15, 2024, with evidence from her doctor or surgeon of the date of the surgery and her anticipated period of recovery. Nguyen delivered a letter from her surgeon (St. Paul's Surgery Letter) on May 16, 2024. The St. Paul's Surgery Letter confirmed that Nguyen was scheduled for surgery but made no reference to her anticipated recovery from such surgery. Following receipt of this letter, the executive director advised that he was not opposing a two- to three-week extension for the Ismail Group to deliver its application materials.
- [11] On May 17, 2024 the panel revised the due dates for applicants' submissions to June 17, response to July 2 and reply to July 9, 2024.
- [12] No further submissions were received from the Ismail Group by June 18, 2024.
- [13] On June 18, 2024, the executive director sent an email inquiring whether the Ismail Group intended to file any materials but received no response to that email.
- [14] On June 21, 2024, the executive director sent an email to the parties advising that he had not received any materials from the Ismail Group and had received no response to his inquiry of them, and, as a result, sought direction on whether the panel expected the executive director to file submissions by July 2, 2024.
- [15] On June 24, 2024, the Hearing Office advised the parties that the panel expected the executive director and the Mohammed Group to deliver their submissions by 4:00 pm July 2, 2024. The executive director delivered submissions prior to the deadline.
- [16] The Mohamed Group made no submissions.
- [17] The applicants made no other submissions prior to the deadline for reply.
- [18] On July 12, 2024, Nguyen sent an email to the Hearing Office and the remaining parties attaching a letter from her surgeon (Physician's Statement) confirming the date of her surgery as May 16, 2024 and stating that her hospital stay would be at most 5 days followed by 8 to 12 weeks of recovery.

II. Applicable Law

- [19] The promotion and preservation of public confidence in the fairness and integrity of our capital markets is one of the principal objectives of our public interest securities regulatory regime.

[20] Confidence is preserved, in part, through timely prosecution of alleged securities regulatory violations. As the panel in *Re Poonian*, 2013 BCSECCOM 448, stated at paragraph 19, quoting from *Bennett (Re)* 1992 LNBCSC 64:

As a general rule, it is in the public interest to proceed with hearings expeditiously. One of the reasons legislatures passed legislation creating administrative tribunals is because there is an expectation those tribunals will be able to make decisions more expeditiously than the courts and therefore with respect to securities regulations as an example, the public interest will be better served. In our view, failure to hold hearings expeditiously can be prejudicial to the public interest...

[21] BC Policy 15-601 – *Hearings* clearly provides that this Commission is the master of its own procedures and can do what is required to ensure fair, flexible and efficient hearings grounded on the principles of natural justice.

[22] The test this Commission has previously applied in an application for severance is set out in *Re Greenway*, 2011 BCSECCOM 518, at paragraph 8, with reference to the BC Supreme Court decision in *Fletcher Challenge Canada Inc. v. Miller et al*, 1991 CanLII 1056:

“severance is only to be granted where it is manifest that prejudice will result if it is not granted... The court in that case denied severance to an applicant because “the public interest in the administration of justice would not be served by individual trials.”

and paragraph 23

The Canadian Oxford Dictionary, Oxford University Press Canada 1998 defines “manifest” as “clear or obvious to the mind or eye.”

[23] In *Re Greenway* the applicant acknowledged, in the context of an application for severance, and the Commission proceeded on the basis, that the party requesting severance bears the onus of establishing that it is manifest that prejudice will result if severance is not granted.

[24] Similarly, as a matter of procedural practice, the party applying for medical accommodations is required to provide credible documentary evidence from a qualified medical professional sufficient to allow the panel to determine the extent or reasonableness of any medical accommodations requested or required in the circumstances.

III. Position of the Executive Director

[25] The executive director submits that the Ismail Group failed to meet the test set out in *Re Greenway* by failing to prove that it is clear or obvious that prejudice will result if the hearing proceeds in its current form.

[26] Moreover, the executive director submits that it is in the public interest and more efficient to hear the allegations against all of the Respondents at the same hearing in front of the same panel for the following reasons:

- a) The allegations against the Ismail Group and the Mohamed Group are identical;
- b) There is significant factual and evidentiary nexus between the questions of fact involving all the Respondents;

- c) The issues set out in the Notice of Hearing pertaining to the Mohamed Group are interwoven with the issues pertaining to the Ismail Group;
- d) The general issues and potential defences which arise from the allegations have a unity to them;
- e) The vast majority of the hearing time would be spent on issues that are common to both respondent groups, and need to be considered at the same time in front of the same panel;
- f) The issues between the Ismail Group and Mohamed Group are not sufficiently separate and distinct to allow for two separate hearings; and
- g) Since the majority of the evidence concerns the same distributions, the two groups of respondents would not be on equal footing. The respondent group whose hearing occurs later would be either prejudiced by having unfavourable findings on the common evidence available prior to its own hearing, or alternatively, receive an unfair advantage by knowing the findings made in the earlier hearing which may allow it to tailor its defence and possibly achieve a better outcome than the earlier group.

[27] The executive director also submits that severance will not result in a more expeditious hearing for any of the Respondents. This assertion is supported by his argument that, once severed, each matter would need to be heard by a different panel while all panels would hear the same evidence with respect to the vast majority of the allegations and witnesses would testify more than once about the same evidence.

[28] The executive director further submits that there is no prejudice to the Ismail Group to be included in the same hearing as the Mohamed Group as this panel is charged with the responsibility of evaluating the allegations with respect to each respondent on their own merits and there is no general harm to the Respondents in terms of time or cost of attendance in a single hearing.

Medical Accommodations

[29] The executive director submits that the Ismail Group failed to provide sufficient evidence to allow this panel to determine the extent or reasonableness of any medical accommodations they may require.

[30] Disclosure was made by the executive director in November 2023 and the executive director submits that such disclosure is not voluminous, mostly consisting of documents reflecting communication between the Respondents and the issuers.

[31] The executive director also submits that the hearing in this matter was set for a date nine months after the set date hearing, consistent with and in response to requests made by Ismail and Nguyen.

[32] The executive director further submits that, in relation to the letters that this panel accepted as constituting the application initiating this process, one of the Respondents stated they did not

have the mental and physical capacity to participate in a hearing process. It is the position of the executive director that these letters provide no indication when, if ever, either party expects to be in a position to participate in the hearing process and failed to provide an outline of what accommodations were sought.

- [33] The executive director also submits that the chair of this panel on six separate occasions provided the Ismail Group with guidance, orally or in writing, that any applications for medical accommodations must be supported by credible documentary evidence from a qualified medical practitioner.
- [34] The executive director further submits that this panel has granted requests by the Ismail Group on two occasions to extend the date for delivery of submissions and supporting evidence in support of their applications.
- [35] Finally, the executive director submits that Ismail provided one document that does not reference any medical conditions, does not come from a qualified medical practitioner and, therefore, is not documentary evidence of sufficient credibility to support providing medical accommodations for Ismail. Moreover, he submits that Ismail has not provided any evidence from a qualified medical practitioner that would allow the panel to understand his medical condition, his prognosis, or any additional details that would allow this panel to determine when, and to which extent, he may be able to participate in the hearing and what accommodations, if any, may be required.
- [36] The executive director submits that, with respect to documents provided by Nguyen, though it is acknowledged that such documents come from qualified medical practitioners and make reference to her medical condition and anticipated surgery, they fail to provide any treatment plan, any prognosis or any additional details that would allow this panel to determine when, and to what extent, she may be able to participate in the hearing and what accommodations, if any, may be required.
- [37] The executive director opposes this panel granting medical accommodations for any member of the Ismail Group.

IV. Analysis

A. Severance of Ismail Group from the Mohamed Group

- [38] A severance order can be made where the Ismail Group establishes, consistent with its onus to do so, that manifest prejudice will result if such order is not granted. The Ismail Group must prove that such prejudice is clear or obvious to the mind or eye.
- [39] The applicants made no attempt to meet such onus, notwithstanding multiple extensions being granted by this panel to allow them to make submissions in support of their severance order application. In the absence of such submissions, the executive director made compelling submissions against granting an order severing the Ismail Group from the Mohamed Group. This panel is the master of its own procedures and is accountable for ensuring that this hearing is fair, flexible and efficient and accords with principles of natural justice. Based on the evidence adduced by way of submissions, this panel concludes that there is no evidence before it suggesting that severing the Ismail Group from the Mohamed Group would contribute to

ensuring a more fair, flexible and efficient hearing. In fact, all indications are, as reasonably reflected in the submissions of the executive director, that a severed hearing process would not result in increased fairness or flexibility, but would be less efficient to the extent that it would require, among other things, duplicate witness testimony, increased dedication and consumption of hearing resources, and a separate panel being convened to consider the same facts and evidence.

[40] After considering the submissions made, this panel finds that there is no evidence to support the proposition that manifest prejudice to the Ismail Group will result if a severance order is not made.

B. Medical Accommodations

[41] The applicants have been advised on six occasions about the necessity for proper documentary evidence of their underlying medical conditions as a precondition for our due consideration of when, and to which extent, the applicants may be able to participate in the hearing and what accommodations, if any, may be required. Providing evidence of the existence of a condition absent any qualified medical interpretation or advice on the implications of such condition on the ability of the applicant to participate in these proceedings leaves us unable to determine what, if any, accommodations may be required in these circumstances.

[42] With respect to Ismail, the sole evidence provided in support of his application for medical accommodation is a document of undetermined validity purporting to designate Ismail as having an underlying medical condition. As communicated to Ismail in the hearing management meeting of April 9, 2024, this document does not satisfy the standard of evidence required to support his application. Ismail has not provided this panel with any evidence of a qualified medical practitioner that would enable this panel to understand his medical condition, his prognosis, or any additional details that then would allow this panel to determine when, and to which extent, he may be able to participate in the hearing and what accommodations, if any, may be required. Absent such evidence, no accommodations will be made.

[43] With respect to Nguyen, this panel has been provided with some evidence of her underlying medical condition. This panel views the Physician's Letter as evidence from a qualified medical practitioner that Nguyen has recently had major surgery and that the recovery time is 8 to 12 weeks after an expected 5-day hospital stay. Relying on the contents of that letter, this panel remains of the view that it is unaware of any reason why Nguyen will not be able to participate in the hearing of this matter on the dates currently scheduled. Moreover, Nguyen has not provided evidence of a qualified medical practitioner that addresses the implications of the underlying condition related to such surgery and what, if any, accommodations would be required in order for her to participate fully in the hearing process. Delay can be an accommodation in certain circumstances though the evidence provided to this panel to date indicates delay is not required as the hearing date is outside the expected recovery period. Accordingly, absent any such evidence, there is no basis upon which accommodation can be made.

V. Ruling

[44] After considering the limited written submissions of Nguyen and the written submissions made by the executive director on the issues of severance and medical accommodation:

- a) With respect to the applications made by Ismail:
- i. Given that this panel did not find that prejudice will result to Ismail if his severance application is not granted in these circumstances, his application for severance from the Mohamed Group fails;
 - ii. Given Ismail has not provided evidence of a qualified medical practitioner that addresses the implications of his underlying medical conditions and what if any accommodations would be required in order for him to participate fully in the hearing process, the application by Ismail for unspecified medical accommodation fails;
- b) With respect to the applications made by Nguyen:
- i. Given that this panel did not find that prejudice will result to NH and GSB if their severance application is not granted in these circumstances, their application for severance from the Mohamed Group fails; and
 - ii. Given Nguyen has not provided evidence of a qualified medical practitioner that addresses the implications of her underlying medical conditions and what if any accommodations would be required in order for her to participate fully in the hearing process, the application by Nguyen for unspecified medical accommodation fails. Based on the limited materials filed by Nguyen with the Hearing Office, this panel sees no reason, at this time, that Nguyen cannot participate fully in the hearing process on the dates currently scheduled.

August 26, 2024

For the Commission

James Kershaw
Commissioner

Marion Shaw
Commissioner

Karen Keilty
Commissioner