



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
PETER SBARAGLIA**

ORDER

(Rule 4.7(2) of the Ontario Securities Commission
Rules of Procedure (2012), 35 O.S.C.B. 10009)

WHEREAS on February 24, 2011, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) in relation to a Statement of Allegations filed by Staff of the Commission (“Staff”) on February 24, 2011 with respect to Peter Sbaraglia (“Sbaraglia”);

AND WHEREAS on March 31, 2011, the Commission heard submissions from Staff and counsel for Sbaraglia and adjourned the hearing to April 28, 2011;

AND WHEREAS on April 28, 2011, the Commission heard submissions from Staff and counsel for Sbaraglia and adjourned the hearing to June 7, 2011;

AND WHEREAS on June 7, 2011, the Commission heard submissions from Staff and counsel for Sbaraglia and adjourned the hearing to July 27, 2011;

AND WHEREAS on July 27, 2011, the Commission heard submissions from Staff and Sbaraglia and ordered that a pre-hearing conference in this matter take place on October 28, 2011;

AND WHEREAS on October 28, 2011, the Commission held a pre-hearing conference in this matter and heard submissions from Staff and counsel for Sbaraglia and adjourned the pre-hearing conference to November 25, 2011 on the consent of the parties;

AND WHEREAS on November 25, 2011, following a pre-hearing conference at which the Commission heard submissions from Staff and counsel for Sbaraglia, the Commission ordered that: Sbaraglia's motion regarding Staff's disclosure, if Sbaraglia determined to bring such a motion, be scheduled for January 24, 2012; the hearing on the merits commence on June 4, 2012 and continue until June 26, 2012, excluding June 5 and 19, 2012; and a pre-hearing conference be held on April 30, 2012;

AND WHEREAS on January 24, 2012, the Commission held a hearing with respect to a disclosure motion brought by Sbaraglia, which motion was dismissed by the Commission, and the Commission ordered that the minimum time requirements under subrule 4.3(1) and rule 4.5 of the Ontario Securities Commission *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "Rules") be extended by an additional 10 days;

AND WHEREAS on April 30, 2012, the Commission held a hearing with respect to a motion brought by counsel for Sbaraglia seeking an adjournment of the hearing on the merits, which was opposed by Staff, and the Commission ordered that: the hearing on the merits originally scheduled to commence on June 4, 2012 will commence on October 22, 2012 and continue until November 14, 2012, inclusive, with the exception of October 23, 2012 and November 5 and 6, 2012, on a peremptory basis with respect to Sbaraglia; a pre-hearing conference be held on June 4, 2012; and the extension of the minimum time requirements under subrule 4.3(1) and rule 4.5 of the Rules ordered on January 24, 2012 be set aside;

AND WHEREAS on June 4, 2012, the Commission held a pre-hearing conference and heard submissions from Staff and counsel for Sbaraglia and adjourned the pre-hearing conference to July 4, 2012;

AND WHEREAS on July 4, 2012, the Commission held a pre-hearing conference and heard submissions from Staff and counsel for Sbaraglia and adjourned the pre-hearing conference to July 19, 2012;

AND WHEREAS on July 19, 2012, the Commission held a hearing with respect to a motion brought by counsel for Sbaraglia seeking an adjournment of the hearing on the merits, to which Staff consented;

AND WHEREAS counsel for Sbaraglia advised the Commission that, on October 2, 2012, the Court of Appeal would hear an appeal and cross-appeal of the decision of the Superior Court of Justice dated May 23, 2012 regarding Sbaraglia's motion to compel production by Duff & Phelps Restructuring Inc. ("D&P" or the "Receiver") of certain documents alleged by Sbaraglia to be relevant to this matter;

AND WHEREAS the Commission ordered that: the hearing on the merits scheduled to commence on October 22, 2012 will commence on March 18, 2013, on a peremptory basis with respect to Sbaraglia, and shall continue until April 5, 2013, inclusive, with the exception of March 26 and 29, 2013 and further continue on April 24 and 25, 2013 (the "Merits Hearing"); and a pre-hearing conference will be held on November 7, 2012;

AND WHEREAS on November 7, 2012, the Commission held a pre-hearing conference and heard submissions from Staff and counsel for Sbaraglia and adjourned the pre-hearing conference to December 12, 2012;

AND WHEREAS on December 12, 2012, the Commission held a pre-hearing conference in this matter and heard submissions from Staff and counsel for Sbaraglia;

AND WHEREAS counsel for Sbaraglia advised the Commission that Sbaraglia intended to request the issuance of a number of summonses, including a summons requiring the Receiver to attend the Merits Hearing and to produce certain documents at the hearing;

AND WHEREAS Staff requested that a hearing be scheduled at which time anyone to whom a summons was issued may bring a motion to have the issuance of the summons reviewed by the Commission in accordance with subrule 4.7(2) of the Rules ("Summons Motion");

AND WHEREAS counsel for Sbaraglia undertook to advise the parties to whom summonses were issued of the date of the hearing with respect to any Summons Motion;

AND WHEREAS the Commission ordered that a hearing be held on January 9, 2013 for the purpose of considering any Summons Motion;

AND WHEREAS on January 9, 2013, Staff, counsel for Sbaraglia, counsel for the Receiver and counsel for an individual to whom a summons had been issued appeared before the Commission and made submissions regarding the scheduling of a Summons Motion;

AND WHEREAS counsel for the Receiver advised the Commission that the Receiver intended to bring a Summons Motion;

AND WHEREAS counsel for Sbaraglia undertook to advise the parties to whom summonses have been issued of the date of the hearing with respect to any Summons Motion;

AND WHEREAS on January 9, 2013, the Commission ordered that a hearing be held on February 8, 2013 at 10:00 a.m. for the purpose of considering any motion brought by the Receiver, and that a hearing be held on February 8, 2013 at 10:00 a.m., following the hearing of any motion brought by the Receiver, for the purpose of considering any other Summons Motion;

AND WHEREAS on January 17, 2013, the Commission issued a summons to Robert Kofman (“Kofman”) of D&P, requiring Kofman to attend the Merits Hearing and to bring with him and produce at the hearing certain documents and things (the “Kofman Summons”);

AND WHEREAS on February 4, 2013, Kofman brought a motion to quash the Kofman Summons (the “Kofman Motion”);

AND WHEREAS the parties to the Kofman Motion failed to comply with the time requirements for the filing of motion materials set out in Rule 3 of the Rules;

AND WHEREAS on February 6, 2013, the Commission ordered that the hearing for the purpose of considering the Kofman Motion be adjourned to February 19, 2013 at 10:00 a.m., and that the hearing for the purpose of considering any other Summons Motion be adjourned to February 19, 2013 at 10:00 a.m., following the hearing of the Kofman Motion;

AND WHEREAS on February 7, 2013, counsel for Sbaraglia and counsel for Kofman advised that they would not be available on February 19, 2013 to attend the Kofman Motion but would be available on February 27, 2013;

AND WHEREAS on February 8, 2013, the Commission ordered that the hearing of the Kofman Motion be adjourned to February 27, 2013 at 10:00 a.m., and that the hearing of any other Summons Motion be adjourned to February 27, 2013 at 10:00 a.m., following the hearing of the Kofman Motion;

AND WHEREAS counsel for Kofman, counsel for Sbaraglia and Staff filed written motion materials in advance of the Kofman Motion and gave oral submissions before the Commission at the hearing of the Kofman Motion on February 27, 2013;

AND WHEREAS at the Kofman Motion on February 27, 2013, upon considering the written and oral submissions of counsel for Kofman, counsel for Sbaraglia and Staff, the Commission gave an oral ruling, with reasons to follow, quashing the Kofman Summons;

IT IS ORDERED that the summons issued to Kofman is quashed.

DATED at Toronto this 27th day of February 2013.

“Alan Lenczner”

Alan Lenczner, Q.C.