



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
THOMAS HOCHHAUSEN and DOUGLAS BENDER**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) allege:

I. OVERVIEW

1. On February 27, 2014, Thomas Hochhausen (“Hochhausen”) and Douglas Bender (“Bender”) (collectively, the “Respondents”) entered into a Settlement Agreement and Undertaking with the Alberta Securities Commission (“ASC”) (the “Settlement Agreement”).
2. Pursuant to the Settlement Agreement, the Respondents each agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta.
3. Staff are seeking an inter-jurisdictional enforcement order reciprocating the Settlement Agreement, pursuant to paragraph 5 of subsection 127(10) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”).
4. The conduct for which the Respondents were sanctioned took place between February to September 2011 (the “Material Time”).

5. In the Settlement Agreement, the Respondents admitted to making statements they knew or ought to have known were misleading or untrue, or which failed to state necessary facts that would reasonably be expected to impact the value of Hypower Fuel Inc. (“Hypower”) securities during the Material Time. Bender further admitted to making false statements under oath to an ASC investigator.
6. The Respondents admitted that their unduly promotional, misleading and untrue statements in news releases and untrue statements under oath to ASC investigators constituted conduct contrary to the public interest.

II. THE ASC PROCEEDINGS

Agreed Facts

7. In the Settlement Agreement, the Respondents admitted the following:

Parties

- a. Hypower is an Alberta corporation, whose securities were quoted for trading on the OTC pink sheets, No Information tier, beginning in 2006.
- b. Hochhausen is an Alberta resident accountant. He acted as a Financial Consultant to Hypower.
- c. Bender is a resident of British Columbia and the President of Hypower.

Circumstances

- d. From February to September 2011 (“Period”), Hypower issued news releases regarding significant developments to the company. All news releases were drafted or reviewed, or both, by Hochhausen and Bender. The Hypower news releases contained numerous misrepresentations, including (but not limited to) the following:

- i. Hypower had “signed a major development agreement for \$5 Million” (February 10, 2011), when, in fact, as at February 10, 2011, no development agreement for \$5 Million had been signed.
- ii. Hypower had an “already extensive patent portfolio”, with patents “presently in place” (February 16, 2011), when Hypower had no patents in place at that time.
- iii. Hypower had approved a share repurchase/buyback plan, to be funded by the company’s available cash (February 22, 2011), when the share buyback program was actually to be funded by a government credit for research conducted by Hypower or from private sources. In fact, Hypower did not receive the credit, never obtained any funds from private sources and no shares were ever repurchased.
- iv. Hypower had “entered into negotiations” with two potential acquisition companies that were on “the cusp of explosive growth with the potential for double digit near term profitability” (March 1, 2011). In fact, the first target acquisition company referred in the news releases as “TC1” had minimal inventory, no cash reserves, and only earned enough to pay salaries and bills. From 2008 to 2011, TC1 had no revenue growth. As at March 1, 2011, the second target acquisition company, “TC2,” was simply a developmental company with no revenue whatsoever.
- v. Hypower had “entered into preliminary agreements with a number of shareholders to repurchase approximately 1.5 million outstanding shares” (March 17, 2011). Hypower never repurchased the 1.5 million outstanding shares as these shares were to be repurchased from revenue or privately sourced funds, and Hypower never earned revenue and did not raise any capital privately.
- vi. Hypower [had] “already begun the process of upgrading to the OTC Pink Current Information” (March 22, 2011). In fact, Hypower did not have

the money and took no steps to upgrade Hypower to the OTC pink sheets, Current Information tier (apart from preliminary discussions with legal counsel in the US).

- vii. Hypower had “reached an Agreement in Principle on the Purchase Formula for the purchase of some or all of the first acquisition Target Company” and the “Target Company’s principals have been updating their business plans and projections with the help of Hypower’s consultants” (April 14, 2011). In fact, Hypower never had an agreement in principle for a purchase price formula with the Target Company.
- viii. The two acquisition companies had “expressed [sic] a strong interest in making use of Hypower’s strength to grow quickly, show financial results, and then be Spun Out as separate public entities trading on recognized exchanges, higher than the Pinksheets OTC,” and that “Hypower shareholders could receive a special dividend giving them a direct shareholding in the target companies in some manner” (April 20, 2011). In fact, neither acquisition company discussed with Hypower the idea of being acquired by Hypower and spun out as separate public entities.
- ix. Both acquisition companies “agreed to provide verifiable information that Hypower can release concerning their operations and business plan in the very near future” (April 25, 2011). In fact, the acquisition companies never agreed to provide to Hypower for dissemination verifiable details of its operations and business plans.
- x. Hypower “accepted an invitation for a site visit to TC2’s engineering firm to perform due diligence,” and that “due diligence is progressing.” Also, Hypower was to be granted “unrestricted access to TC2’s entire engineering team,” and “TC2’s technology is truly one of a kind, leading edge, game changer technology that has applications in the medical, oil and gas, automotive and household markets.” “The due diligence on TC1 is proceeding well, and Hypower continues to assist both TC’s in

developing their websites, and with revenue projections” (April 27, 2011). The facts are that Hypower did not conduct due diligence of TC2 or TC1 in 2011, TC2 never spoke to Hypower about Hypower having access to TC2’s consulting engineers. TC1 had a website, but Hypower never assisted TC1 with developing that website. TC2 never had a website.

- xi. “Verifiable information from TC2’s professional advisors will be forthcoming over the next few weeks” (July 13, 2011), when, in fact, TC2 never had any discussions about releasing verifiable information to Hypower.
- e. Hypower never issued any clarifying or correcting news release to the public with respect to the above misrepresentations.
- f. Hypower, Hochhausen and Bender knew or reasonably ought to have known at the time and in the light of the circumstances in which these representations were made that these statements were misleading or untrue, or failed to state facts required in order for the statements not to be misleading, and further, that the statements would reasonably be expected to have a significant effect on the market price or value of Hypower securities.
- g. Hypower’s securities, which traded at less than \$0.01 in February 2011, rose to a high of \$0.05 during the Period.

Misleading ASC Staff

- h. During [ASC] Staff’s investigation, Hochhausen and Bender were interviewed under oath. In Bender’s interview, he stated that the principals of TC1 received, reviewed and approved Hypower news releases regarding TC1, and that the principal of TC2 received, reviewed and approved Hypower news releases regarding TC2 during the Period described above before they were issued.
- i. The principals of TC1 and TC2 refuted Bender’s statements in their interviews with ASC Staff.

8. In the Settlement Agreement, the Respondents admitted the following:

Admitted Breaches of Alberta Securities Laws

9. Based on the Admitted Facts outlined above:

- a. Hypower, Hochhausen and Bender admit that they have breached subsection 92(4.1) of the Alberta *Securities Act*, R.S.A. 2000, c. S.4 (the “Alberta Act”) by making statements that they knew or ought to have known were misleading or untrue, or which failed to state facts necessary to be stated, and which would reasonably be expected to have a significant effect on the market price or value of Hypower’s securities.
- b. Bender admits that he breached section 221.1 of the Alberta Act by making a statement to an [ASC] investigator, that is TC1 and TC2 received Hypower news releases before they were issued, which was untrue.
- c. Hypower, Hochhausen and Bender admit that their unduly promotional, misleading and untrue statements in news releases, and untrue statements under oath to [ASC] Staff investigators, constituted conduct that is contrary to the public interest.

The Settlement Agreement and Undertakings

10. Pursuant to the Settlement Agreement, the Respondents each agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta:

- a. Hochhausen:
 - i. Hochhausen pay to the ASC the amount of \$40,000;
 - ii. Hochhausen pay to the ASC the amount of \$10,000 towards investigation and legal costs;
 - iii. for a period of 10 years from the date of the Settlement Agreement:

1. Hochhausen refrain from becoming or acting as either a director or an officer of any issuer, registrant, or investment fund manager, and to immediately resign any such positions he currently holds, except that Hochhausen may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public;
2. Hochhausen refrain from acting in a management or consultative capacity in connection with activities in the securities market, except as permitted under subparagraph 19.3(a) of the Settlement Agreement; and
3. Hochhausen refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws.

b. Bender:

- i. Bender pay to the ASC the amount of \$30,000;
- ii. Bender pay to the ASC the amount of \$10,000 towards investigation and legal costs;
- iii. for a period of 5 years from the date of the Settlement Agreement:
 1. Bender refrain from becoming or acting as either a director or an officer of any issuer, registrant, or investment fund manager, and to immediately resign any such positions he currently holds, except that Bender may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public;
 2. Bender refrain from acting in a management or consultative capacity in connection with activities in the securities market, except as permitted under subparagraph 20.3(a) of the Settlement Agreement; and
 3. Bender refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

11. In the Settlement Agreement, the Respondents agreed to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta.
12. Pursuant to paragraph 5 of subsection 127(10) of the Act, an agreement with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements on the person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.
13. Staff allege that it is in the public interest to make an order against the Respondents.
14. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.
15. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the *Ontario Securities Commission Rules of Procedure*.

DATED at Toronto, this 20th day of January, 2015.