

3.1.3 Richard Ochnik and 1464210 Ontario Inc.

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

AND

IN THE MATTER OF
RICHARD OCHNIK AND
1464210 ONTARIO INC.

Hearing: March 1, 2, 8-9.

Panel: Paul M. Moore, Q.C. - Commissioner (Chair of the Panel)
Robert W. Davis, FCA - Commissioner
Davis L. Knight, FCA - Commissioner

Counsel: Matthew Britton - On behalf of Staff of the
John Humphreys - Ontario Securities Commission
Richard Ochnik - Respondent

ORAL DECISION

The following text has been prepared for purposes of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the chair of the panel for the purpose of providing a public record of the decision.

[1] The following is our decision on the merits in this matter. We are not issuing reasons for our decision at this time. Reasons will be issued after we have heard submissions as to appropriate sanctions.

[2] Virtually all of staff's evidence in this matter is uncontroverted, and, for the most part, credible.

[3] Mr. Ochnik called only one witness. Much of her evidence was not germane to the issues before us. Where it touched on the credibility of Mr. Brown, we concluded that the witness could not be relied upon. Much of the evidence to which Mr. Ochnik referred us in his argument was not inconsistent with staff's evidence. Although Mr. Ochnik referred to evidence that he argued went to the credibility and motivation of Mr. Brown in testifying, we concluded that, generally, Mr. Brown's evidence on key points, was credible.

[4] Generally, we accept staff's view of the facts as outlined in the argument of staff. There are other conclusions we have drawn based on all the evidence.

[5] Mr. Ochnik chose not to testify and, therefore, did not take the opportunity to give evidence to explain away the arguments and assertions of others, or that might have contradicted other witnesses.

[6] We do not accept Mr. Ochnik's view of TD-Waterhouse's role in this matter. It was each investor, individually, for whom it acted, and owed a duty, not the respondents. It is the obligation of an issuer to verify the facts that might support the availability of a registration and prospectus exemption. There is no evidence that TD-Waterhouse assumed any duty to assist the respondents in this.

[7] We will set out in our reasons our specific finding of fact.

[8] We find that the respondents breached the *Securities Act* as alleged: namely, that they traded securities without being registered with the Commission to trade securities and without an exemption from the requirement for registration contrary to section 25 of the *Act*, and that they distributed securities of 1464210 Ontario Inc. without the filing of a prospectus and obtaining a receipt therefor from the Director contrary to section 53 of the *Act*.

[9] We also find that the conduct of the respondents was contrary to the public interest in that the breaches of the *Securities Act* by the respondents were done, not only without the required disclosure, but also with misinformation and prevarication by Ochnik and others acting in conjunction with him, particularly in connection with the issues of securities of 1464210 Ontario Inc., and in connection with an RRSP/loan scheme that was deliberately hidden from TD-Waterhouse Canada Inc., who were induced with deception to participate in facilitating investments in 1464210 Ontario Inc., and involving investors in financial difficulty who were induced to invest in 1464210 Ontario Inc.

[10] The conduct of the respondents was not inadvertent. Rather, it was egregious and predatory.

[11] We believe that the conduct is worthy of sanctions tailored to protect against future breaches of the Act and future conduct of this nature in the marketplace by the respondents for a long, long time.

[12] We also believe that sanctions should be tailored to act as a specific deterrent to the respondents and to stand as a warning to others that similar conduct will not be treated lightly by the Commission.

[13] We will set a date to hear argument as to appropriate sanctions and whether an application should be made to the Superior Court of Justice for a declaration pursuant to subsection 128(1) of the *Act* that the respondents have not complied with Ontario securities law and that, if such declaration be made, the Superior Court of Justice make such further orders pursuant to subsection 128(3) of the *Act* as it considers appropriate including orders pursuant to subsection 128(3) clause 10 directing that the respondents repay to security holders moneys paid for securities and orders pursuant to subsection 128(3) clause 13 requiring the respondents to compensate or make restitution to aggrieved parties, such as, investors in 1464210 Ontario Inc., and perhaps TD-Waterhouse.

Approved by the chair of the panel on March 10, 2006.

“Paul M. Moore”