



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- AND -

**IN THE MATTER OF
PORTFOLIO CAPITAL INC., DAVID ROGERSON
and AMY HANNA-ROGERSON**

**ORDER
(Sections 127 and 127.1 of the *Securities Act*)**

WHEREAS on March 25, 2013, the Ontario Securities Commission (“the Commission”) issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the “Act”) in connection with a Statement of Allegations filed by Staff of the Commission (“Staff”) on March 25, 2013 with respect to Portfolio Capital Inc. (“Portfolio Capital”), David Rogerson (“Rogerson”) and Amy Hanna-Rogerson (“Hanna-Rogerson”) (collectively, the “Respondents”);

AND WHEREAS the Notice of Hearing set a hearing in this matter for April 17, 2013;

AND WHEREAS on April 17, 2013, Staff and counsel to Rogerson appeared before the Commission and no one appeared on behalf of Hanna-Rogerson or Portfolio Capital;

AND WHEREAS on April 17, 2013, the Commission ordered that a pre-hearing conference take place on May 27, 2013 at 9:00 a.m.;

AND WHEREAS on May 27, 2013, Staff and counsel to the Respondents appeared and made submissions before the Commission;

AND WHEREAS on May 27, 2013, the Commission ordered that a pre-hearing conference take place on June 24, 2013 at 9:00 a.m.;

AND WHEREAS on May 27, 2013, the parties agreed that at the pre-hearing conference scheduled for June 24, 2013 at 9:00 a.m., the parties would be prepared to set the following dates:

- (a) a date in September 2013 for a pre-hearing conference, by which time the Respondents and Staff will have provided witness lists and disclosure to the other parties;
- (b) a date in October 2013 for a further pre-hearing conference to prepare for the hearing on the merits; and
- (c) dates in November 2013 for the hearing on the merits;

AND WHEREAS on June 4, 2013, Staff filed an Amended Statement of Allegations with respect to the Respondents;

AND WHEREAS on June 24, 2013, Staff appeared and made submissions and counsel to Rogerson appeared and made submissions on behalf of his client and on behalf of counsel to Hanna-Rogerson and Portfolio Capital;

AND WHEREAS on June 24, 2013, the Commission ordered that:

- (a) Staff shall provide any additional disclosure to the Respondents by July 12, 2013;
- (b) Staff shall provide its witness list and hearing briefs to the Respondents by September 12, 2013;
- (c) the Respondents shall provide their witness lists and hearing briefs to Staff by September 25, 2013;
- (d) the hearing be adjourned to a further pre-hearing conference to be held on September 27, 2013 at 10:00 a.m. to prepare for the hearing on the merits; and

- (e) the hearing on the merits in this matter shall commence on November 4, 2013 at 10:00 a.m. and shall continue on November 6, 7, 8 and 11, 2013;

AND WHEREAS on June 26, 2013, Staff filed an Amended Amended Statement of Allegations with respect to the Respondents;

AND WHEREAS on September 27, 2013, Staff appeared and made submissions and counsel to Rogerson and Portfolio Capital appeared and made submissions on behalf of his clients and on behalf of counsel to Hanna-Rogerson;

AND WHEREAS on September 27, 2013, the Commission ordered that the hearing be adjourned to a further pre-hearing conference to be held on October 9, 2013 at 2:00 p.m.;

AND WHEREAS on October 9, 2013, Staff and counsel to the Respondents appeared and made submissions before the Commission;

AND WHEREAS on October 9, 2013, the Commission ordered that:

- (a) the hearing dates of November 4, 6, 7 and 8, 2013 be vacated;
- (b) the hearing on the merits in this matter shall commence on November 11, 2013 at 10:00 a.m. and shall continue on November 13, 14 and 15, 2013;
- (c) the hearing be adjourned to a further pre-hearing conference to be held on October 17, 2013 at 2:00 p.m.;
- (d) the motion brought by counsel to Rogerson and Portfolio Capital to adjourn the commencement date of November 11, 2013 for the hearing on the merits (the "Motion") would be heard immediately following the pre-hearing conference scheduled for October 17, 2013; and
- (e) the Respondents shall be granted one last indulgence and shall provide their hearing briefs, will-say statements and witness list to Staff by October 29, 2013;

AND WHEREAS counsel to Rogerson and Portfolio Capital filed a Notice of Motion, dated October 15, 2013, and Staff filed the Affidavit of Stephanie Collins, sworn October 16, 2013, in relation to the Motion;

AND WHEREAS on October 17, 2013, Staff and counsel to the Respondents appeared and made submissions for a pre-hearing conference;

AND WHEREAS on October 17, 2013, following the pre-hearing conference, the Commission held a hearing with respect to the Motion, which Staff opposed and counsel to Hanna-Rogerson supported;

AND WHEREAS the Commission considered the factors to grant an adjournment set out in Rule 9.2 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071, along with the motion materials and submissions of the parties, and ordered that:

- (a) the hearing on the merits scheduled to commence on November 11, 2013 will commence on February 10, 2014 and shall continue on February 12, 13, 14 and 18, 2014; and
- (b) the hearing be adjourned to a further pre-hearing conference to be held on December 18, 2013 at 10:00 a.m.;

AND WHEREAS the Respondents failed to provide their hearing briefs, will-say statements and witness list to Staff by October 29, 2013, as ordered by the Commission on October 9, 2013;

AND WHEREAS on November 29, 2013, Staff and counsel to Rogerson, who also appeared as a representative for Hanna-Rogerson and Portfolio Capital, appeared and made submissions before the Commission at a confidential pre-hearing conference;

AND WHEREAS the Panel informed the parties that any documents that the Respondents wish to rely on at the hearing on the merits must be submitted by January 3, 2014, and that the Respondents would be precluded from submitting any further documents for the hearing on the merits after that date;

AND WHEREAS on November 29, 2013, the Commission ordered that:

- (a) the Respondents shall provide their hearing briefs, will-say statements and witness list to Staff by 4:30 p.m. on January 3, 2014;
- (b) the pre-hearing conference scheduled for December 18, 2013 at 10:00 a.m. be vacated; and
- (c) the hearing be adjourned to a further pre-hearing conference to be held on January 10, 2014 at 10:00 a.m.;

AND WHEREAS on January 10, 2014, Staff and counsel to the Respondents appeared and made submissions before the Commission;

AND WHEREAS Staff and counsel to the Respondents consented to submit an agreed statement of facts by January 17, 2014, and the parties agreed that Staff would provide the Respondents with the particulars of its allegations in relation to subsection 126.1(b) of the Act by January 29, 2014;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED that:

- (a) an agreed statement of facts shall be submitted by the parties in this matter by January 17, 2014, and, in the event that an agreed statement of facts is not reached, the parties will communicate with the Registrar of the Office of the Secretary to schedule a further appearance in this matter; and
- (b) Staff shall provide to the Respondents the particulars of its allegations in relation to subsection 126.1(b) of the Act by January 29, 2014.

DATED at Toronto this 10th day of January, 2014.

“Alan J. Lenczner”

Alan J. Lenczner