



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
MAPLE LEAF INVESTMENT FUND CORP., JOE HENRY CHAU
(aka: HENRY JOE CHAU, SHUNG KAI CHOW and HENRY SHUNG KAI
CHOW), TULSIANI INVESTMENTS INC., SUNIL TULSIANI and RAVINDER
TULSIANI**

**REASONS FOR DENYING A MOTION FOR AN ELECTRONIC HEARING
(Rules 3 and 10.2 of the *Ontario Securities Commission Rules of Procedure*)**

Hearing:	August 12, 2010	
Reasons:	October 12, 2010	
Panel:	James E. A. Turner	- Vice-Chair
Appearances:	Anna Perschy Carlo Rossi	- For Staff of the Commission
	Kevin Richard	- For Ravinder Tulsiani (via telephone conference)
	Joe Henry Chau	- On his own behalf and for Maple Leaf Investment Fund Corp. (via telephone conference)

REASONS FOR DENYING A MOTION FOR AN ELECTRONIC HEARING

I. INTRODUCTION

[1] The respondent Joe Henry Chau (a.k.a. Henry Joe Chau, Shung Kai Chow and Henry Shung Kai Chow) (“**Chau**”) brought a motion to the Ontario Securities Commission (the “**Commission**”) for an order that the hearing on the merits in this matter be conducted electronically by video conference.

[2] The motion hearing was held before me on August 12, 2010. Counsel for staff of the Commission (“**Staff**”) attended in person and Chau and counsel for Ravinder Tulsiani attended via telephone conference call.

[3] Staff contested Chau’s motion for an electronic hearing. None of the other respondents took a position regarding the motion.

[4] Chau currently resides in China (and participated in the hearing by telephone conference call from China) and makes the motion for an electronic hearing on the grounds that he is unable for financial reasons to travel to Ontario for an oral hearing or to retain counsel to represent him.

[5] On August 13, 2010, I issued an order dismissing the motion. These are my reasons for that order.

II. BACKGROUND

[6] Rule 10.2 of the *Ontario Securities Commission Rules of Procedure* (2009), 32 O.S.C.B. 1991 (the “**Rules of Procedure**”) permits the Commission to make an order for the holding of an electronic hearing. That Rule provides as follows:

10.2 Electronic Hearings – A hearing may be conducted by way of an electronic hearing, unless a party objects as provided by subsection 5.2(2) of the SPPA.

[7] Section 5.2(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the “**SPPA**”) states:

5.2 (1) A tribunal whose rules made under section 25.1 deal with electronic hearings may hold an electronic hearing in a proceeding.

(2) The tribunal shall not hold an electronic hearing if a party satisfies the tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.

[8] The Commission’s rules made pursuant to section 25.1 of the SPPA deal with electronic hearings. Accordingly, if a party objects to a motion for an electronic hearing and we are satisfied that an electronic hearing is likely to cause significant prejudice to that party, an electronic hearing must not be held. In all other cases, it is in the Commission’s discretion as to

when hearings will be conducted electronically. Staff is a party to this proceeding and has objected to the motion for an electronic hearing.

[9] Rule 1.2(3) of the Rules of Procedure states that:

The Rules shall be construed to secure the most expeditious and least expensive determination of every proceeding before the Commission on its merits, consistent with the requirements of natural justice.

[10] The hearing on the merits in this matter involves five parties and, based on submissions from Staff, is scheduled to run for at least fifteen hearing days. Staff intends to call ten witnesses, some of whom will require interpreters. The matters involved are serious and Chau has made statements to the effect that his regulatory problems are the result of alleged inappropriate conduct of Staff.

[11] Staff provided evidence that the daily cost of a hearing using the Commission's video conference technology would be in the thousands of dollars. Chau submitted that he is not able, and does not intend, to contribute to the costs of holding an electronic hearing.

[12] Chau submitted that he is, for financial reasons, unable to travel to Toronto for the hearing on the merits or to retain counsel to represent him. Chau made that statement in the course of the hearing on the motion but did not provide evidence to support his statement in the form of an affidavit or otherwise. Accordingly, Staff has not been able to cross-examine Chau with respect to that statement. Accordingly, Staff submits that Chau has not provided any evidence in support of his motion.

[13] I should add that any electronic hearing would be conducted during usual business hours in Toronto. Chau would participate during the night, local time, in China.

III. ANALYSIS

[14] While the Commission has in the past permitted certain witnesses to testify at a hearing by video conference, the Commission does not appear to have conducted a lengthy hearing on the merits by video conference. To that extent, this is a matter of first instance.

[15] The question of whether to conduct a hearing electronically has been addressed by other administrative tribunals. In *Pinkney v. Datex Billing Services*, 2009 HRTO 1732 ("**Pinkney**"), the Human Rights Tribunal of Ontario denied an applicant's motion that a hearing be conducted by teleconference because she had moved to Nova Scotia. In their reasons, that tribunal stated:

There are serious credibility issues involved. The ordinary expectation is that participants, especially parties, make themselves available in person to testify and submit to cross-examination and also be present in person to question other witnesses. There have been circumstances where the Tribunal has permitted witnesses to participate by telephone where the extent and the nature of their testimony made such arrangements fair, just and expeditious.

Pinkney v. Datex Billing Services, 2009 HRTO 1732 at para. 6.

[16] In *Woodman v. G.R.M. Contracting Ltd.*, 2000 CanLII 10389 (ON L.R.B.) (“*Woodman*”), the Ontario Labour Relations Board rejected the applicant’s request that the hearing be conducted by telephone conference. In its reasons for this decision, the board stated at para. 5:

... conducting an electronic hearing where oral testimony is to be adduced should only take place in extraordinary circumstances and where the Board can be assured that the witness giving evidence in another location is not being assisted, whether by another person who is present but cannot be seen or heard, or by having notes or other forms of an aide-mémoire to which the witness might refer. Furthermore, a party adverse in interest to the witness must have the ability to put documents or other exhibits to the witness in cross-examination during the course of a hearing.

[17] We note that in *Pinkney* and *Woodman* it appears that the person making the request for an electronic hearing was the same person who had, in the first instance, made an application for review by the Human Rights Commission. Accordingly, the conclusions in *Pinkney* and *Woodnam* may have somewhat limited application. Having said that, I accept the statements in paragraphs 15 and 16 of these reasons as reflecting appropriate considerations.

[18] In considering the motion, I weighed the following factors:

1. The matters involved in this matter are serious and Chau has put in issue Staff’s conduct in the circumstances.
2. Conducting a fifteen-day hearing on the merits by video conference would present many challenges. It would be more difficult (i) for Staff to conduct any cross-examination of Chau, if Chau decides to testify, and to submit documents to him; (ii) for the hearing Panel to assess Chau’s credibility; and (iii) for the hearing Panel to appropriately manage the hearing process and ensure that any party outside the hearing room that is participating by video conference is acting appropriately and follows the accepted rules of procedure before the Commission;
3. No matter what arrangements are put in place for a video conference hearing, there would be a significant risk that the hearing would be disrupted or delayed by failure of the electronic arrangements;
4. In my view, the rules of natural justice do not require that the hearing on the merits in this matter be conducted electronically. Chau has the opportunity to attend the hearing on the merits in person or by counsel and to make full answer and defence. Regardless of the outcome of this motion, Staff will continue to provide Chau with notice of this proceeding and Chau will be able to obtain transcripts of the testimony given at the hearing on the merits and to arrange to obtain documents and other materials tendered in evidence;
5. Chau’s conduct that is the subject matter of the hearing on the merits took place in Ontario at a time when Chau was a resident of Ontario. He left the jurisdiction after he was interviewed by Staff as part of the investigation that gave rise to this proceeding.

That is not to suggest that there was necessarily any connection between those two events; only to note that Chau voluntarily left the jurisdiction knowing that a Commission investigation was on-going that could lead to a proceeding before the Commission;

6. Chau submitted that he is not able or prepared to contribute to the costs of conducting the hearing electronically. That is certainly not a determining factor, but it is a consideration. In effect, the Commission is being requested to conduct a hearing on the merits in a manner that may create disruption, delay and a less efficient and fair process while incurring substantial costs in doing so; and
7. Staff is objecting to an electronic hearing on the merits on the basis that, in all of the circumstances, Staff would be significantly prejudiced by such a hearing.

[19] Based on the foregoing, I concluded that conducting an electronic hearing on the merits in this matter would likely cause Staff significant prejudice. In any event, I was not prepared in these circumstances to exercise the Commission's discretion to permit an electronic hearing. I am particularly concerned that the hearing Panel be able to maintain the integrity of the hearing process and be able to fully assess the credibility of the testimony of witnesses at the hearing.

[20] I would add that this decision does not address the question whether Chau should be permitted to testify electronically at the hearing on the merits if he wishes to do so. Testifying in that manner may give rise to a number of the concerns identified in these reasons. Having said that, it is a separate question whether Chau should be permitted to do so and Chau is entitled to raise that issue with the Panel of the Commission hearing this matter on the merits. This decision is not intended to restrict the discretion of that Panel to conduct the hearing in any manner the Panel considers to be fair and appropriate in the circumstances.

IV. CONCLUSION

[21] For the reasons discussed above, I dismissed the motion brought by Chau for the holding of an electronic hearing on the merits.

Dated this 12th day of October, 2010.

"James E. A. Turner"

James E. A. Turner