



Capital
Markets
Tribunal

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Citation: *Gong (Re)*, 2022 ONCMT 27
Date: 2022-10-05
File No. 2022-14

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

REASONS AND DECISION
(Rule 21(4) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

Adjudicators: Russell Juriansz (chair of the panel)
Timothy Moseley
Sandra Blake

Hearing: By videoconference, September 29, 2022

Appearances: Mark Bailey For Staff of the Ontario Securities
Braden Stapleton Commission

Paul Stern For Edward Gong
Margot Davies

Alice Zhou For herself

REASONS AND DECISION

1. OVERVIEW

- [1] On June 13, 2022, Staff of the Ontario Securities Commission (**Staff**) filed a Statement of Allegations with respect to Xiao Hua (Edward) Gong (**Gong**) alleging securities fraud and unregistered trading.
- [2] On July 29, 2022, after the first attendance, Alice Zhou (**Zhou**) filed a motion seeking intervenor status to participate in this proceeding. She submits that there is an unresolved issue regarding Gong's identity and that forged documents may be presented in court proceedings and before the Tribunal.
- [3] Zhou further submits that she is representing investors located in China who were victims of Gong's alleged misconduct.
- [4] Staff and Gong oppose Zhou's motion.
- [5] We dismiss Zhou's motion for the reasons set out below. We conclude that Zhou:
 - a. is not directly affected by this proceeding;
 - b. would not likely have a unique and useful contribution to the panel's understanding of the issues in this case; and
 - c. would best convey her concerns to Staff.

2. TEST FOR GRANTING INTERVENOR STATUS

- [6] Rule 21(4) of the *Capital Markets Tribunal Rules of Procedure and Forms* provides that on a motion, a panel may grant a person who is not a party to a proceeding intervenor status to participate in all or part of the proceeding. The factors to consider in a motion to intervene include:
 - a. the nature of the matter;
 - b. the issues;
 - c. whether the person or company is directly affected;
 - d. the likelihood that the person or company will be able to make a useful and unique contribution to the Panel's understanding of the issues;

- e. any delay or prejudice to the parties; and
- f. any other factor the Panel considers relevant.¹

3. ANALYSIS

3.1 Is Zhou directly affected by the outcome of this proceeding?

[7] This proceeding is an enforcement hearing concerning issues of fraud and unregistered trading. The outcome may result in sanctions against Gong. While investors, who may include Zhou, may have been impacted by the alleged actions of Gong, they are not directly affected by the outcome of the Proceeding.

[8] Further, we are unclear as to how concerns about Gong's identity in other proceedings relate to this proceeding. In her motion, Zhou states that Xiao Hua Gong is the man who's been "committing numerous crimes to thousands and thousands of civilians". She believes he has swapped identities in other proceedings to escape punishment and jail time. However, as Zhou acknowledges, Xiao Hua Gong is correctly named in this proceeding. Any sanctions or penalties imposed if Staff's allegations are found to be substantiated will be imposed on Gong, the respondent in this proceeding.

3.2 Is there an alternative avenue available to Zhou to communicate her concerns?

[9] Upon receiving an email from Zhou on July 8, 2022, Staff contacted Zhou on two separate occasions inviting her to discuss any further information she may have regarding the matters raised in her email and regarding the grounds supporting her request to intervene. Zhou has not held discussions with Staff.

3.3 Is it likely that Zhou would make a unique and useful contribution to the panel's understanding of the issues?

[10] Even if Zhou has some relevant information, we conclude that on balance she would not likely make a unique and useful contribution to the panel's understanding of the issues. Investors who are alleged victims of misconduct have an understandable interest in ensuring that an enforcement proceeding is conducted effectively, but it is the public interest that is at stake in an

¹ *Catalyst Capital Group (Re)*, 2016 ONSEC 14 at para 13-14

enforcement proceeding, not the interest of one or more individual investors. In our view, Zhou's participation as an intervenor would likely undermine rather than enhance the efficiency of this proceeding.

[11] That conclusion is unaffected by whether, as Zhou claims, she represents a group of investors.

[12] We should not grant intervenor status where the intervenor and other investors have other avenues available to them if they believe they have a legitimate claim against Gong.²

[13] We find that Zhou and other investors have other avenues available to them to make their concerns known. One such avenue is to contact Staff to discuss those concerns.

4. CONCLUSION

[14] For the reasons set out above, we dismiss Zhou's motion for intervenor status.

Dated at Toronto this 5th day of October, 2022

"Russell Juriansz"

Russell Juriansz

"Timothy Moseley"

Timothy Moseley

"Sandra Blake"

Sandra Blake

² *Katanga Mining (Re)*, 2021 ONSEC 11 at para 20