



Capital
Markets
Tribunal

Tribunal
des marchés
financiers

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Citation: *Nova Tech Ltd (Re)*, 2024 ONCMT 1
Date: 2024-01-09
File No. 2023-20

**IN THE MATTER OF
NOVA TECH LTD and CYNTHIA PETION**

REASONS AND DECISION

**(Rule 3 and Subrules 6(4), 21(3), 23(6)(a), 27(1), (2) and (3) and 28(5)(1) of
the *Capital Markets Tribunal Rules of Procedure and Forms*)**

Adjudicators: M. Cecilia Williams (chair of the panel)
Jane Waechter

Hearing: In writing; final written submissions received November 9, 2023

Appearances: Brian Weingarten For Staff of the Ontario Securities
Commission

No one appearing for Nova Tech Ltd, or Cynthia Petion

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REASONS AND DECISION

1. OVERVIEW

- [1] Cynthia Petion is the sole beneficial owner, officer and director of Nova Tech Ltd. Staff of the Ontario Securities Commission allege that Petion and Nova Tech sold securities in Ontario without being registered to do so, sold those securities without filing a prospectus, and violated an earlier temporary cease trade order of the Tribunal.
- [2] By order dated November 30, 2023,¹ we granted the following procedural relief to Staff:
- a. this motion will take place without notice to Petion;
 - b. service of the Notice of Hearing and Statement of Allegations on Petion is waived;
 - c. notice and service of all future processes on Nova Tech and Petion is waived;
 - d. Staff are not required to fulfil certain disclosure obligations with respect to Nova Tech and Petion; and
 - e. the merits hearing will proceed in the respondents' absence.
- [3] Our reasons for that decision follow.

2. PROCEDURAL HISTORY

- [4] The Statement of Allegations and Notice of Hearing against Nova Tech and Petion were issued on August 24 and 25, 2023 respectively.
- [5] Staff have detailed their efforts to serve these originating documents on both Nova Tech and Petion in the following affidavits:
- a. Affidavit of Service of Rita Pascuzzi affirmed September 20, 2023,² and

¹ (2023), 46 OSCB 9790

² Exhibit 1, Affidavit of Service of Rita Pascuzzi affirmed September 20, 2023 (**Pascuzzi September Affidavit**)

b. Affidavit of Attempted Service of Rita Pascuzzi affirmed November 9, 2023.³

[6] Staff filed another affidavit of Rita Pascuzzi affirmed November 21, 2023 which details their service efforts for this motion.⁴

3. ANALYSIS

3.1 Hearing in writing

[7] Staff asked that this motion be heard in writing. Under rule 23(6) of the *Capital Markets Tribunal Rules of Procedure and Forms* (the **Rules**) the Tribunal may order that a hearing is conducted in writing if:

- a. the only purpose of the hearing is to deal with procedural matters; or
- b. the Panel is satisfied that there is a good reason to conduct the hearing as a written hearing.

[8] This hearing meets both criteria to take place in writing – the requested relief is procedural in nature, and there is good reason to conduct the hearing in writing given that Nova Tech and Petion have not participated in this proceeding to date, as described below.

3.2 Notice of this Motion for Petion

[9] Staff asked that this motion be heard without notice to Petion. Rule 28(5)(a) of the Rules provides that a party may make a motion without notice if the nature or circumstances of the motion make service “impractical or unnecessary”.

[10] Staff made numerous efforts to serve Petion and Nova Tech with their motion record, memorandum of fact and law, and book of authorities for this motion, as described in the Pascuzzi Second November Affidavit. Staff sent a link to these three records to five email addresses associated with the respondents and sent hard copies of the documents by courier to four addresses that they demonstrated were connected to the respondents.⁵ The couriered packages were

³ Exhibit 2, Affidavit of Attempted Service of Rita Pascuzzi affirmed November 9, 2023 (**Pascuzzi First November Affidavit**)

⁴ Exhibit 3, Affidavit of Service of Rita Pascuzzi affirmed November 21, 2023 (**Pascuzzi Second November Affidavit**)

⁵ Pascuzzi Second November Affidavit at paras 2-7

signed for at two of the addresses, although one of these packages was never claimed from building security and subsequently returned to FedEx.⁶

[11] Staff has sufficiently demonstrated their attempts to serve Petion. It would be impractical in the circumstances to require Staff to serve Petion with this motion as she has not responded to any of Staff's various efforts. Petion has also been difficult to serve with the Notice of Hearing and Statement of Allegations, as described in paragraph 17 below. We expect any further service efforts would produce similar outcomes, and that further service efforts would be a waste of time and resources for Staff.

[12] Petion's elusiveness and seeming disinterest in participating in this proceeding also makes it unnecessary to serve this motion on her.

[13] As a result, we are satisfied that timely and efficient adjudication of the allegations against Petion will be promoted by having this motion proceed without notice to her.

3.3 Service of originating documents on Petion

[14] Staff asked for an order waiving service of the Notice of Hearing and Statement of Allegations on Petion.

[15] Subsection 6(1) of the *Statutory Powers Procedure Act*⁷ (**SPPA**) requires that a party receive "reasonable notice" of a hearing. The SPPA also gives tribunals the power to determine their own procedures and practices, both by making orders in a proceeding and by establishing procedural rules that are consistent with the SPPA.⁸ This Tribunal's Rules were made under the authority of the SPPA.

[16] Rule 6(4) of the Rules gives the Tribunal discretion to grant an order waiving service that would otherwise be required. Discretion may be exercised under rule 6(4) where the evidence demonstrates that Staff have "exhausted all reasonable efforts" to effect service on the party.⁹

⁶ Pascuzzi Second November Affidavit at paras 5-6

⁷ RSO 1990, c S.22

⁸ SPPA, s 25.0.1

⁹ *Threegold Resources Inc (Re)*, 2021 ONSEC 15 at paras 11 and 12; *Lehman Brothers & Associates Corp (Re)*, 2011 ONSEC 36 at para 34

- [17] Staff made numerous efforts to serve Petion with the Notice of Hearing and Statement of Allegations, as described in the Pascuzzi September Affidavit and the Pascuzzi First November Affidavit. In particular, the Statement of Allegations and Notice of Hearing were delivered to three email addresses associated with Petion and couriered to two of Petion's last known residences.¹⁰ The couriered packages were signed for by an occupant of the residence.¹¹ Delivery was also unsuccessfully attempted twice at an additional residence in Panama associated with Petion.¹² Staff did wide-ranging searches to locate Petion, including reviewing email and address information used by other regulators (in St. Vincent and the Grenadines, the US and Panama) who have dealt with Petion or are similarly attempting to reach Petion.
- [18] The Pascuzzi September Affidavit confirms that Petion is the sole director, officer and beneficial owner of Nova Tech.¹³
- [19] We are satisfied that Staff have exhausted all reasonable efforts to locate Petion and to serve her in this proceeding. Staff's service efforts, as set out in the Pascuzzi September Affidavit, quite possibly made it to Petion's attention and could have supported an order validating service. Instead, Staff asked that we waive service, and we are satisfied that it is appropriate to exercise our discretion as they requested. We find that it would be pointless to require further efforts to serve Petion with the Notice of Hearing and Statement of Allegations.

3.4 Relief from future service on the respondents and proceeding in their absence

- [20] Staff asked that we relieve them from any obligation to serve future processes on the respondents and asked that we hold the merits hearing in the respondents' absence.
- [21] In support of their request, Staff rely on rules 6(4) and 21(3) of the Rules, together with s. 7(1) of the SPPA. Rule 21(3) permits the Tribunal to proceed in the absence of a party who has been served with the Notice of Hearing but does

¹⁰ Pascuzzi September Affidavit at paras 2-3, 6-7

¹¹ Exhibits 9 and 11 referred to in the Pascuzzi September Affidavit

¹² Pascuzzi First November Affidavit at paras 2-4

¹³ Pascuzzi September Affidavit at para 3

not attend the hearing, and state that the party is not entitled to any further notice. Section 7(1) of the SPPA is similarly worded but requires notice of the proceeding rather than service.

- [22] As to Nova Tech, the Notice of Hearing was served on Nova Tech as described in the Pascuzzi September Affidavit.¹⁴ Nova Tech did not attend the first appearance and did not send a representative. As a result, rules 6(4) and 21(3) are engaged - Nova Tech is not entitled to service of any further process, and the hearing on the merits can proceed in Nova Tech's absence.
- [23] Rule 21(3) provides authority to order that a proceeding occur in the absence of a party. Rule 21(3) is premised on the party being served with the Notice of Hearing and not attending. In Petion's case, we have waived service of the Notice of Hearing. That waiver of service extends to rule 21(3). Based on the facts and reasoning in paragraphs 14 to 19, we found that there is simply no benefit to having Staff continue with futile service efforts. The same rationale for waiving service of the usual documents on an elusive and unresponsive party supports having a hearing on the merits taking place in the absence of that party.

3.5 Disclosure Relief

- [24] Pursuant to rule 3 of the Rules, Staff asked for relief from their upcoming disclosure obligations in rules 27(1), (2) and (3). Rule 3 provides the Tribunal with a general power to waive any of the requirements under the Rules at any time on such terms as the Tribunal considers appropriate to further the objectives of the rules, namely, to ensure that proceedings before the Tribunal are conducted in a "just, expeditious, and cost-effective manner".¹⁵
- [25] Given that we have ordered that Petion and Nova Tech are not entitled to receive further service of process and that the hearing on the merits may occur in their absence, it follows that Staff should not be required to provide the respondents with disclosure, witness lists and summaries, or a hearing brief. It would be both unnecessarily time consuming and costly to provide these disclosures to parties

¹⁴ Pascuzzi September Affidavit at paras 2-6

who have shown no interest in participating in the hearing on the merits. We find that waiving these disclosure obligations will ensure the just, expeditious and cost-effective hearing of this matter under rule 3.

4. CONCLUSION

[26] We are satisfied that Staff's service and disclosure obligations owed to the respondents ought to be waived in this proceeding, and the merits hearing will proceed in the respondents' absence.

Dated at Toronto this 9th day of January, 2024

"M. Cecilia Williams"

M. Cecilia Williams

"Jane Waechter"

Jane Waechter