



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE SECURITIES ACT
R.S.P. 1990, c. S.5, AS AMENDED (the Act)**

- and -

**IN THE MATTER OF JOHN ALEXANDER CORNWALL, KATHRYN A. COOK,
DAVID SIMPSON, JEROME STANISLAUS XAVIER,
CGC FINANCIAL SERVICES INC. AND FIRST FINANCIAL SERVICES INC.**

MOTION TO BE REMOVED AS COUNSEL

Hearing: Thursday, January 18, 2007

Panel: Paul M. Moore, Q.C. – Vice-Chair and Chair of the Panel
Margot C. Howard – Commissioner

Counsel: James Camp for Gowlings Lafleur Henderson, counsel of record
for D. Simpson and First Financial Services Inc.
Sean Horgan for staff of the Commission

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.

SUBMISSIONS BY MR. CAMP:

[1] We're here today to be removed as counsel for Mr. Simpson and First Financial Services pursuant to rule 1.4(7) because our clients have failed to co-operate and provide information in a manner that prejudices our ability to fully and properly represent them, both before the hearing and at the hearing itself.

[2] We have served our clients with notice of the motion in accordance with rule 1.4(8) on January 8, 2007, and I have here an affidavit of Michael Turner swearing that he served Mr. Simpson at his residence at 54 Beech Street, Ottawa, Ontario.

[3] The gist of our reasons for wanting to withdraw as counsel for Mr. Simpson and First Financial is set out by Scott Kugler in his affidavit in support of this motion in paragraph 2.

[4] “Despite our requests,” said Mr. Kugler, “for information and cooperation from our clients over the last six weeks, we have not received same. In particular, we have sought information through written correspondence sent by mail, fax and email and by telephone through multiple telephone calls. I was told personally by David Simpson that he has received our letters.”

[5] Without the ability to obtain the information and cooperation of our clients, we cannot properly represent them at, and in advance of, the hearing. As a result, I do not believe that we can continue to act as solicitors of record for the respondents, David Simpson and First Financial Services.

[6] Mr. Simpson has not meaningfully responded to our requests for him to provide information to us and to co-operate with us since at least November 2, 2006.

[7] I’m passing up now a letter dated January 5, 2006, from Mr. Kugler to Mr. Simpson, stating that because Mr. Simpson has not responded to Gowlings’ request for information or co-operated with Gowlings in the manner that Gowlings had hoped, it was no longer possible for Gowlings to represent Mr. Simpson and that we would be seeking to withdraw as counsel for Mr. Simpson.

[8] To date Mr. Simpson has not responded to that letter either and he has also obviously not responded to service of the notice of motion.

[9] As the panel can see, Mr. Simpson is not present today.

[10] The hearing in this matter is set to begin February 21, 2007 and will continue on the 22nd and 23rd. That gives Mr. Simpson four weeks from the date of this hearing and six weeks from the date that he was first served with the notice of motion, to retain and instruct new counsel.

[11] The defence of Mr. Simpson and First Financial to this proceeding is not at all prejudiced by Gowlings Lafleur Henderson withdrawing as counsel. The documentary record in this matter is not large at all. I understand it runs to some – I think Mr. Horgan will correct me if I’m wrong – some three or four bankers’ boxes.

[12] Neither the facts of this case nor the legal issues represent any degree of complexity and can certainly be mastered in the time remaining to Mr. Simpson’s new counsel.

[13] On that basis, Gowling Lafleur Henderson request leave to withdraw as Mr. Simpson’s and First Financial’s counsel.

ORAL DECISION AND REASONS

Vice-Chair Moore:

[14] The panel has decided to grant the motion.

[15] The reasons for granting the motion are as follows.

[16] Counsel has a duty to act as a professional.

[17] Counsel representing a respondent is not a mere agent just to do what that respondent may want him or her to do at the respondent's direction.

[18] Counsel has to and is expected to exercise his or her professional skill and judgment in representing a respondent. To do this, it is absolutely fundamental that the client provide counsel with information in order for counsel to fulfill its duty.

[19] A lack of information from the respondent to counsel and a lack of co-operation is anathema to the relationship.

[20] In this case counsel has done the proper and honourable thing in notifying its clients, i.e., the two respondents, that the relationship is not working; that co-operation is essential; that information sharing is essential; and that the clients have chosen not to do anything in that regard.

[21] The two respondents have had the opportunity to come forward to explain or object to counsel's ceasing to represent them. They have not done so.

[22] This relationship is not in the interests of the two respondents, nor in the interests of this tribunal.

[23] There are four weeks left before the hearing date.

[24] We state on the record that going forward we will not entertain a motion for adjournment at the last moment on the basis that the two respondents wish to have counsel.

[25] The two respondents must take responsibility for their case and if they are going to be represented by counsel, they have at least four weeks to brief new counsel. Indeed, as pointed out by counsel this morning, they will have had six weeks, if we take the time that they were notified that their current counsel would be seeking a change.

[26] We have been advised, and it appears from the record, that this matter is not overly complex. There should not be any difficulty in new counsel, or indeed the two respondents themselves if they wish to represent themselves, getting prepared for a hearing that starts on February 21st and is scheduled to run for a couple of days.

[27] We direct that a copy of the transcript of this motion hearing be sent to Mr. Simpson and First Financial and we recommend that my comments about not entertaining an adjournment be highlighted.

[28] We are not binding any future panel as to what they may decide on an application for adjournment, but we are putting on the record for that future panel the facts that I have outlined and the fact that the two respondents must take responsibility and suffer the consequences for their inaction.

[29] Finally, because counsel have moved promptly and correctly to remove themselves from the record, we see no prejudice to the respondents. This is not a last-minute move.

[30] It will be sufficient to serve the transcript on the two respondents by leaving a copy at the personal respondent's residence addressed to the two respondents.

[31] There are three addresses. My suggestion is that, if Mr. Simpson is not present in person when a copy of the transcript is left at the Beech Street address, you leave a copy at the Beech Street address to the respondent's attention and that you leave copies at the other two addresses or mail copies to the other two addresses and prove that that has been done. My suggestion to a future panel is that that would be sufficient notice of the warning that the two respondents should be prepared to represent themselves or, if they choose to retain any agent or counsel, that they take advantage of the time that is left to do that, and that the Commission would not entertain favourably a last-minute motion to adjourn to allow them or new counsel to prepare their case.

[32] Having said that, we don't intend to bind any future panel. There may be facts that are not before us that would change their mind.

Mr. Camp:

[33] The individual respondent has responded to a fax number in the past. Faxes do reach him, but obviously not in a meaningful fashion.

Vice-Chair Moore:

[34] Yes. My suggestion is that you use that fax number as a supplemental means of sending the two respondents a copy of the transcript.

Approved by the chair of the panel on January 23, 2007.

PAUL M. MOORE