



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
PETER SBARAGLIA**

ENDORSEMENT

Hearing: January 24, 2012

Panel: Christopher Portner - Commissioner

Appearances: Peter Sbaraglia - Self-represented

Jennifer Lynch - for Staff of the Ontario Securities
Commission

ENDORSEMENT

[1] This is an Endorsement following a hearing held on January 24, 2012 to consider a motion brought by the respondent, Peter Sbaraglia (“Sbaraglia” or the “Respondent”). In his motion, Sbaraglia requests an order that:

- (a) Staff of the Ontario Securities Commission (“Staff”) separate the documents that are relevant to its investigation of Sbaraglia from the other documents included in Staff’s disclosure;
- (b) Staff provide disclosure of certain documents obtained by RSM Richter Inc. (the “Receiver”), the Court-appointed receiver of all assets, undertakings and properties of Sbaraglia, his wife and his two companies; and
- (c) The timelines for disclosure of documents Staff intends to provide or enter as evidence at the hearing and of witness lists and summaries set out in rules 4.3(1) and 4.5 of the *OSC Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the “Rules”) be abridged and Staff be required to disclose such information as soon as practicable, and in any case, sooner than the required number of days before the commencement of the hearing on the merits (20 days and 10 days, respectively).

[2] I am satisfied, with respect to the first request, that Staff has complied as diligently as appears to be possible with their disclosure obligations to Sbaraglia and I am satisfied with Staff’s explanation that they do not believe that they have burdened the Respondent with excessive disclosure in the sense of a full dump of irrelevant information that would otherwise burden the Respondent to separate “the wheat from chaff” (see *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 at paras. 20 and 29 and *Re Biovail Corp.* (2008), 31 O.S.C.B. 7161 at para. 15). I do not believe that any relief is appropriate or justified in this particular circumstance.

[3] With respect to the second item, the Respondent has deep concerns about information that may be available in the Receiver’s files or possession that could be relevant to his ability to respond to the allegations made against him by the Commission. It also appears that the Respondent has been led to believe by third parties that they may have provided exculpatory information to the Receiver which, for one reason or another, has not yet surfaced. I can understand how deeply this would concern the Respondent if he feels that there is information that would assist him in addressing the allegations against him.

[4] Regrettably, however, I agree with Staff’s position that the Commission does not have the authority to order productions from the Receiver, who is an independent officer of the Court, as Staff has submitted (see Staff’s disclosure obligations pursuant to rule 4.3(2) of the Rules). I do this recognizing the Commission’s limitations of authority, which is not open-ended authority as an adjudicative tribunal. The Commission is not a court, but as counsel for Staff has submitted, the Respondent is not without remedies. The Respondent is not left devoid of any ability to address the very things that concern him the most on this motion.

[5] I am troubled by the third item only in one sense. The Commission has adopted the Rules to have uniform application, and Staff has responsibilities under the *Securities Act*, R.S.O. 1990 c. S.5, as amended and under the Rules to treat all respondents in a similar fashion and on a fair and open basis.

[6] That being said, the Commission is always very mindful of the burdens that are faced by unrepresented respondents, who do not necessarily have the skills, the experience or the resources on which to rely, in analyzing documents which have formed part of Staff's disclosure and the relevance of which to the case that will be made by Staff at the time of the merits hearing they have to anticipate.

[7] I am mindful of Staff's commitment set out in paragraph 49 of their submissions "... to work with the Respondent to provide its hearing briefs and witness statements in advance of the hearing on the merits to allow the Respondent sufficient time to prepare his case". I struggle between that soft commitment from Staff and the Respondent's need for predictability. I balance that against counsel for Staff's comment that any constraint imposed on Staff should, appropriately, be imposed on the Respondent, because each party has to meet the case made by the other party.

[8] I accept Staff's alternative submission to provide Sbaraglia with some modest relief. To provide a little more predictability, and recognizing that the hearing on the merits is approximately six months from this motion hearing, I order that the minimum time requirements under rules 4.3(1) and 4.5 of the Rules be extended by an additional 10 days. I do not view this as unduly burdensome on Staff, which has offered that as an alternative submission to providing no relief to the Respondent. Each party shall therefore deliver copies of all documents that the party intends to produce or enter as evidence at the hearing as soon as is reasonably practicable, and in any case, at least 30 days before the commencement of the hearing on the merits. Each party shall serve every other party and file with the Secretary, a list of the witnesses the party intends to call to testify on the party's behalf at the hearing, at least 20 days before the commencement of the hearing, and, if material matters to which a witness is to testify have not otherwise been disclosed, a party to a proceeding shall provide to the other party a summary of the evidence that the witness is expected to give at the hearing, at least 20 days before the commencement of the hearing.

[9] In making this order, I have weighed the Respondent's need for predictability with his need to maintain flexibility with respect to preparation for the hearing on the merits.

Dated at Toronto this 7th day of March, 2012.

"Christopher Portner"

Christopher Portner