

Ontario Securities Commission Commission des valeurs mobilières de l'Ontario

22nd Floor 20 Queen Street West Toronto ON M5H 3S8

22e étage 20, rue queen oust Toronto ON M5H 3S8

Citation: MM Café Franchise Inc. et al, 2017 ONSEC 13

Date: 2017-04-24

## IN THE MATTER OF MM CAFÉ FRANCHISE INC., TECHOCAN INTERNATIONAL CO. LTD., 1727350 ONTARIO LIMITED, MARIANNE GODWIN, DAVE GARNET CRAIG and HAIYAN (HELEN) GAO JORDAN

## **ORAL REASONS FOR APPROVAL OF A SETTLEMENT**

**Hearing:** April 24, 2017

**Decision:** April 24, 2017

**Panel:** Timothy Moseley Commissioner and Chair of the Panel

AnneMarie Ryan Commissioner

**Appearances:** Keir Wilmut For Staff of the Commission

Gavin Smyth

Shawn Graham For Marianne Godwin

Dave Garnet Craig On his own behalf and on behalf of

MM Café Franchise Inc.

## **ORAL REASONS AND DECISION**

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record.

- [1] The respondents, Ms. Godwin and Mr. Craig, were respectively Chief Executive Officer and Chief Development Officer of the respondent MM Café Franchise Inc. ("MM Café") Both were also directors of that company.
- [2] MM Café has admitted that it contravened subsection 53(1) of the Securities Act¹ (the "Act") by conducting an illegal distribution of its own securities. Ms. Godwin and Mr. Craig have admitted that as directors and officers, they contravened section 129.2 of the Act by authorizing, permitting, or acquiescing in MM Café's illegal distribution.
- [3] While the parties have reached an agreement as to the sanctions that ought to be imposed, our obligation is to consider whether to approve the agreement, which is the product of negotiation between Staff and the respondents. We must still be satisfied that the agreed-upon sanctions are appropriate in the circumstances and that it would be in the public interest to approve the settlement and issue the order contemplated by the agreement.
- [4] For the reasons that follow, we will approve the settlement and issue the requested order.
- [5] The underlying conduct is serious. Investors put their money at risk without the benefit of protections that should have been in place. As directors and officers of MM Café, Ms. Godwin and Mr. Craig had an obligation to obtain proper advice and ensure that MM Café was aware of, and followed, applicable regulations.
- [6] The sanctions agreed to by the parties are not severe. Each of Ms. Godwin and Mr. Craig is prohibited from being a director or officer for five years, or possibly as little as two years if they comply with the specified conditions. No administrative penalty is provided for and the agreed amount of costs is nominal.
- [7] The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties. In addition, this Panel had the opportunity to meet with counsel for Staff and for the respondents in a confidential conference. We reviewed the settlement agreement and we heard submissions from counsel.
- [8] There are a number of mitigating factors in this case. The respondents cooperated with Staff's investigation, none of them has previously been found to have breached the Act, none of them was previously registered with the Commission, and there is no evidence that they knowingly breached the Act.
- [9] In addition, Ms. Godwin and Mr. Craig played a limited role. The agreed-upon contraventions relate only to Ms. Godwin's and Mr. Craig's role as directors and officers. This is not about what they did. It's about what they allowed to happen, but should have prevented. They relied on a third party advisor to

.

<sup>&</sup>lt;sup>1</sup> RSO 1990, c S.5

- manage investor relations and they retained an agent to solicit investors. As they now know, those steps were not enough.
- [10] Those who accept the role of director or officer of a company that is going to raise funds in the capital markets take on an important responsibility. Ms. Godwin and Mr. Craig did not fulfill their obligations and it is appropriate that they be prohibited from taking on similar roles for some time.
- [11] With respect to the agreed amount for costs, we note that both Ms. Godwin and Mr. Craig have limited financial resources. Had this matter proceeded to a contested hearing, the respondents might very well have been subject to greater sanctions and costs than those called for by this agreement. We acknowledge that this settlement resolves the proceeding with certainty, and in an efficient way, saving the costs that would be incurred in a contested hearing against the respondents.
- [12] Staff and the respondents submit that this settlement is in the public interest, and we agree. For all of these reasons, we approve the settlement agreement as requested and we will issue an order substantially in the form of Schedule A to that agreement.

Dated at Toronto this 24<sup>th</sup> day of April, 2017.

"Timothy Moseley"	"AnneMarie Ryan"
Timothy Moseley	AnneMarie Ryan