

IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF
A DECISION OF THE DIRECTOR OF THE ONTARIO SECURITIES COMMISSION
DATED JUNE 23, 2017 CONCERNING THE APPLICATION TO AMEND THE
REGISTRATION OF HANANE BOUJI

APPLICATION FOR HEARING AND REVIEW

June 28, 2017

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APPLICATION FOR A HEARING AND REVIEW

TAKE NOTICE THAT the Applicants, Hanane Bouji, Global RESP Corporation (“Global RESP”) and Global Growth Assets Inc. (“GGAI”) apply to the Ontario Securities Commission (the “Commission”) pursuant to section 8 of the *Securities Act*, R.S.O. 1990, c S.5, as amended (the “*Act*”) for a hearing and review of the decision of the Director dated June 23, 2017 (the “Decision”).

1. THE APPLICANTS REQUEST that the Commission make an order:

- (a) Setting aside the Decision and amending the registration of Hanane Bouji to include registration as the ultimate designated person (“UDP”) for Global RESP and GGAI; and
- (b) Such further and other relief as counsel may request and the Commission may order.

2. THE GROUNDS FOR THE APPLICATION ARE:

- a) The Director erred in law, proceeded on incorrect principles and overlooked material evidence in a number of ways, including that the Director:
 - i. Failed to consider the evidence before him and repeatedly relied upon submissions as though they were evidence;

- ii. Found that the next UDP would have to be independent when the existing UDP and CEO of Global RESP and GGAI is and has not been independent since January 2015;
 - iii. Failed to consider that as agreed to in the April 16, 2014 Order, Mr. Bouji remained as the CEO and UDP of Global RESP and GGAI for nine months after the date of the Order. There is no evidence of any issues arising in that nine-month period while Mr. Bouji continued in those roles;
 - iv. Relied upon a definition of independent not relied upon by any party, namely "not influenced or controlled in any way by other people, events or things". This definition would, on its face, preclude any and all applicants from ever being registered as a UDP for any registrant;
 - v. Failed to consider the clear and cogent evidence of Ms. Bouji, as elicited by Staff, that Mr. Bouji works with and recruits sales managers, sales directors and vice-presidents of sales, who themselves set their sales objectives. The positions of sales manager, sales director and vice-president of sales are not positions that require any registration. There is no evidence to suggest that Mr. Bouji is involved in "sales in general";
 - vi. Failed to consider that the April 16, 2014 Order does not prohibit Mr. Bouji from being involved in recruiting a sales team and in working with that sales team to meet their objectives.
 - vii. Found that Ms. Bouji "will be challenged to ensure that her father does not have an improper role in the business", without any evidence to support such a finding and failed to consider material evidence to the contrary;
 - viii. Found that the Motion for Directions brought by Global RESP and GGAI was in response to Elizabeth King's recommendation to dismiss the application to amend Ms. Bouji's registration. Ms. King's recommendation came after service of the Notice of Motion for Directions;
 - ix. Failed to consider the inconsistency between submissions made by Staff to the Director and the evidence of what Staff told the Applicants since 2015;
 - x. Failed to provide adequate reasons to explain the basis for refusing to amend the registration of Ms. Bouji; and
 - xi. Such further and other grounds as counsel may advise and the Commission may permit.
- b) On April 14, 2014, Global RESP and GGAI, amongst others, entered into a Settlement Agreement with Staff (the "Settlement Agreement") in which the parties agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated January 10, 2013, subject to approval by the Commission. The Settlement Agreement

and the terms of what became the April 16, 2014 Order were negotiated and agreed to by the parties;

- c) The Commission approved the Settlement Agreement in the April 16, 2014 Order. There were no reasons issued by the Commission;
- d) The meaning of “independent” is defined in the April 16, 2014 Order as follows:

“Independent” will have the same meaning as set out in sections 1.4 and 1.5 of National Instrument 52-110 *Audit Committees* (“NI 52-110”) except that the point of reference shall be Bouji or any entities owned or controlled by Bouji.

(the “Independence Requirement”).

- e) Between 2015 and 2017, Staff of the Commission repeatedly advised the Applicants that the April 16, 2014 Order required the next UDP to follow Mr. Prestwich to be independent;
- f) On or about February 17, 2017, an application was filed to amend the registration of Hanane Bouji to include UDP of Global RESP and GGAI. Ms. Bouji is and has been an Executive Vice-President and a director of Global RESP and GGAI.
- g) On March 3, 2017, Staff, on the authority of the Director, who at that time was Elizabeth King, examined Ms. Bouji as part of its review of the application.
- h) On April 11, 2017, Global RESP and GGAI delivered a Notice of Motion for Directions in which they sought directions on the correct interpretation of the April 16, 2014 Order.
- i) Elizabeth King, a Director as defined in the *Securities Act*, delivered a letter to Hanane Bouji on April 13, 2017 in which she stated “Although there is no time limit attached to the requirement that the UDP of Global RESP and GGAI be independent, in view of all of the terms of the [April 16, 2014 Order], the registration of a non-independent UDP would be objectionable for so long as Mr. Bouji is prohibited from becoming or acting as an officer or director”.
- j) On April 25 and 27, the Commission heard submissions on Staff’s objection to the Motion for Directions on the basis of a lack of jurisdiction to hear the motion. The Commission dismissed the Motion for directions on jurisdictional grounds on April 27,

2017, with reasons issued on May 2, 2017. In those reasons, the Commission stated “The moving parties' concern about Staff's position with respect to Ms. Bouji's application is reasonable, and arises from the e-mails and correspondence described in the following paragraphs”. The Commission also requested, orally on April 27, 2017, that Ms. Bouji's registration application be determined expeditiously;

- k) On April 26, 2017, Ms. King advised that James Sinclair would be the Director to make the decision on the registration application. On May 3, 2017, Ms. King advised that Mr. Sinclair would not be the Director to make the decision. On May 5, 2017, Michael Denyszyn advised that Kevin Fine had been designated as the decision maker in respect of Staff's recommendation to refuse Ms. Bouji's application to amend her registration.
- l) Submissions and evidence were provided to Mr. Fine by the parties on May 12, 2017. Staff confirmed to Mr. Fine on May 15, 2017 that the matter should be considered fully submitted to the director for his decision. On June 6, 2017, Mr. Fine sought clarification from counsel for the Applicants on one issue and any further submissions from Staff on any additional precedents there may be involving an interpretation of “otherwise objectionable”. Counsel for the Applicants responded on June 7, 2017. Staff provided further submissions on June 12, 2017. Staff's submissions went beyond the request made by Mr. Fine.
- m) Mr. Fine released his decision on June 23, 2017;
- n) Section 8 of the Act;
- o) Rule 14 of the Commission Rules of Procedure; and
- p) Such further and other grounds as Counsel may advise and the Commission may permit.

3. THE DOCUMENTARY EVIDENCE to be used at the hearing of this application is:

- a. The documentary evidence presented to the Director in this matter on May 12, 2017;
- b. The submissions provided by Staff and the applicant to the Director as part of the “Opportunity to be Heard”;
- c. The letter from the Director dated June 6, 2017;
- d. The Decision;
- e. The affidavit of Nekeisha Danvers;
- f. Such further and other material as counsel may advise and the Commission may permit.

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