

3.1.3 Mountain Inn at Ribbon Creek Limited Partnership, et al.

**IN THE MATTER OF
THE MOUNTAIN INN AT RIBBON CREEK LIMITED PARTNERSHIP,
THE LODGE AT KANANASKIS LIMITED PARTNERSHIP
AND JOHN PENNINGTON**

**PURSUANT TO SECTIONS 127 AND 127.1
OF THE SECURITIES ACT**

Hearing: Friday, November 18, 2005

Panel: Paul M. Moore, Q.C. – Chair
Robert W. Davis
Paul K. Bates

Appearances: Gregory W. MacKenzie - For the Ontario Securities Commission
Erez Blumberger
Mark Pinch

Howard D. Rubinoff - For The Mountain Inn at Ribbon Creek Limited Partnership,
Judith Hong Wilkin - The Lodge at Kananaskis Limited Partnership,
and John Pennington

ORAL RULING AND REASONS

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.

[1] This is a hearing under Section 127 of the Securities Act for the Ontario Securities Commission to consider whether it is in the public interest to approve a proposed Settlement Agreement dated November 16, 2005, between staff and Mountain Inn at Ribbon Creek Limited Partnership, the Lodge at Kananaskis Limited Partnership, and John Pennington, and to make an order approving the sanctions agreed to by staff and the respondents.

[2] The facts before us are that from 2003 to 2005, Mountain and Kananaskis have repeatedly failed to file on time their annual and interim filings as required by Multilateral Instrument 52-109 and National Instrument 51-102 and its predecessor, Rule 52-501. Despite requests by staff, the respondents' late filings have continued.

[3] Over the past 18 months, Mountain and Kananaskis have

1. Failed to make filings on time resulting in the following cease-trade orders:
 - i. from May 28, 2004, to June 11, 2004, for failing to file AFS on time for fiscal 2003;
 - ii. from May 3, 2005 and from May 17, 2005, for failing to file AFS on time for fiscal 2004 together with MD&A and CEO/CFO certificates.
2. Failed to make interim filings on time by,
 - i. failing to file IFS on time for four of the past five filing deadlines. Filings were late from one business day to nine business days.
 - ii. failing to file interim MD&A and interim CEO/CFO certificates by Pennington on time for four of the past five filing deadlines. Filings were late from 6 business days to 203 business days.

[4] The respondents have admitted that their conduct was contrary to the public interest and contrary to the requirements of Ontario Securities Laws.

[5] The respondents have agreed to the following sanctions:

- A. Pursuant to Section 127.1(4), that Mountain and Kananaskis will institute changes to their existing procedures so as to ensure filing on time of their future annual and interim filings.
- B. Pursuant to Section 127.1(6), that Pennington, Mountain, and Kananaskis be reprimanded.
- C. Pursuant to Section 127.1(9), that Mountain and Kananaskis will each pay an administrative penalty of \$5,000, and
- D. any other order as we deem appropriate.

[6] We find that the proposed sanctions are in the public interest and are appropriate in the circumstances of this case.

[7] This is the first proceeding by the Commission for the late filing of CEO and CFO certificates as required by Multilateral Instrument 52-109 which took effect on March 30, 2004. However, the Commission has previously considered the issue of late filings more generally.

[8] In the matter of *Wells Fargo Financial Canada Corporation*, the Commission approved a settlement agreement relating to Wells Fargo's repeated failure to file prospectus supplements. The Commission approved a settlement agreement in that matter, and Wells Fargo agreed to pay a total of \$25,000 consisting of a \$20,000 administrative penalty and \$5,000 in costs. (*Wells Fargo Financial Canada Corporation* (2005) 28 OSCB 1791).

[9] In the matter of *Farini Companies Inc.*, the Commission approved a settlement agreement related to repeated late filings of interim annual financial statements by Farini, a reporting issuer. In that matter, the Commission approved a settlement agreement requiring a director of Farini named Harris to resign as a director of Farini for one year, and it also reprimanded Farini and Harris. (*Farini Companies Inc.* (2003) 26 OSCB 5178).

[10] To repeat the facts of this case, between 2003 and 2005 despite repeated requests of Pennington by Staff, Mountain and Kananaskis repeatedly breached Ontario Securities Law by failing to meet their annual and interim filing obligations. In the past 18 months, Mountain and Kananaskis have been cease traded twice, directly related to the late filings.

[11] Furthermore, they have failed to comply with the recently enacted National Instrument 51-102 and Multilateral Instrument 52-109 as demonstrated by their failure to meet five of six filing deadlines for MD&A and CEO/CFO certificates required to be signed by Pennington.

[12] Reporting issuers that fail to meet their filing obligations frustrate the disclosure system aimed at ensuring full and prompt disclosure of financial information. A sound disclosure system is fundamental to the operation and integrity of the capital markets.

[13] In this particular settlement agreement, we note there is no provision for an administrative penalty to be paid by Pennington. We wish to state that we are concerned that there have been repeated failings to file on time. While we are content that changes to the procedures of the corporate respondents are planned relating to filing future annual and interim reports, we are not totally satisfied that the past behaviour will be rectified. However, we believe that the respondents must be given a chance to put the plan in action.

[14] If they fail, then we would be faced with a second offence, and the Commission would take a dim view of a second offence. I would predict that the sanctions, if you come back before us, will be substantially increased over the sanctions that were agreed to today. And I would expect that an administrative penalty against the individual would also be appropriate.

[15] So in addition to the reprimand that we will be issuing, we're giving a warning that a second offence would be viewed most seriously.

[16] Mr. Pennington, you are personally hereby reprimanded, and the two corporate respondents, Mountain and Kananaskis, are also reprimanded. You may be seated.

Approved by the chair of the panel on December 14, 2005.

"Paul M. Moore"
Chair