



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
SULJA BROS. BUILDING SUPPLIES, LTD., PETAR VUCICEVICH,
KORE INTERNATIONAL MANAGEMENT INC., ANDREW DEVRIES,
STEVEN SULJA, PRANAB SHAH, TRACEY BANUMAS, AND SAM SULJA**

REASONS AND DECISION

Hearing: September 13 and 14, 2010

Decision: October 28, 2010

Panel: Patrick J. LeSage - Commissioner and Chair of the Panel
Sinan O. Akendiz - Commissioner

Appearances: Jonathon T. Feasby - For Staff of the Ontario Securities
Usman M. Sheikh Commission

Petar Vucicevich - For himself

Tracey Banumas - For herself

Pranab Shah - For himself

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REASONS AND DECISION

1. Overview

A. History of the Proceeding

[1] This was a hearing before the Ontario Securities Commission (the “Commission”) pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), to consider whether Sulja Bros. Building Supplies, Ltd., (Nevada) (“Sulja Nevada”), Petar Vucicevich (“Vucicevich”), Kore International Management Inc. (“Kore International”), Andrew DeVries (“DeVries”), Steven Sulja, Pranab Shah (“Shah”), Tracey Banumas (“Banumas”) and Sam Sulja breached the Act and acted contrary to the public interest.

[2] A temporary cease trade order (“TCTO”) in this matter was issued on December 22, 2006 with respect to Sulja Nevada, Sulja Bros. Building Supplies Ltd., (Ontario) (“Sulja Ontario”), Kore International, Vucicevich and DeVries. The Commission issued periodic extensions of the TCTO, which now continues until the completion of the hearing on the merits.

[3] A Notice of Hearing and a Statement of Allegations were issued on December 27, 2006 with respect to Sulja Nevada, Sulja Ontario, Kore International, Vucicevich and DeVries. On June 16, 2008, a second Notice of Hearing and an Amended Statement of Allegations were issued to add the following respondents: Steven Sulja, Shah, Banumas and Sam Sulja. Staff of the Commission (“Staff”) removed Sulja Ontario as a respondent on the same day.

[4] The hearing on the merits in this matter commenced on September 13, 2010. Vucicevich and Banumas were present. Shah attended on September 14, 2010. During the hearing on September 14, 2010, Vucicevich, Banumas and Shah advised they did not contest Staff’s allegations. The proceeding related to these three respondents (the “Non-Contesting Respondents”) was severed and dealt with on September 14, 2010.

[5] In oral reasons, we made perfunctory findings against the Non-Contesting Respondents with the understanding that more complete reasons would follow. These are those reasons.

2. Evidence

A. Modified Amended Statement of Allegations and Staff’s Memorandum of Findings Requested

[6] At the commencement of the hearing on September 13, 2010, Vucicevich and Banumas stated that they desired a timely resolution to this matter and would like to move directly to a sanctions hearing. Vucicevich and Banumas indicated they would not be calling witnesses nor would they contest evidence put forward by Staff. In an effort to expedite the hearing, the Panel invited discussions between Staff and the Non-Contesting

Respondents to allow the parties to identify relevant evidence that the Non-Contesting Respondents would not challenge. After some considerable discussion, first with Vucicevich and Banumas and later with Shah, the parties agreed that the uncontested evidence on which Staff would rely would be a modified version of the Amended Statement of Allegations.

[7] After reviewing the Amended Statement of Allegations, as modified and read into the record (the “Modified Amended Statement of Allegations”), the Panel invited Staff to provide submissions on the findings of fact that Staff were seeking to be drawn from the evidence. The Panel also invited Staff to revise the allegations to avoid duplication, in keeping with the principle articulated in *R. v. Kienapple*, [1975] 1 S.C.R. 729.

[8] This was a novel process arising from a set of unusual circumstances. We invited the parties to engage in discussions and on consent, evidence was put forward as already indicated by way of a Modified Amended Statement of Allegations and Staff’s Memorandum of Findings Requested (“Staff’s Memorandum”). The Non-Contesting Respondents understood the Modified Amended Statement of Allegations and Staff’s Memorandum were not Agreed Statements of Facts but, rather, it was agreed it would be evidence upon which the Panel would make its findings on a no-contest basis.

[9] In agreeing with the parties to proceed in this manner, we took into consideration that tribunals are meant to operate in a less formal manner than courts. Further, we take comfort in the fact that the Non-Contesting Respondents were present, and in fact, it was their comments that triggered the discussions and the resultant procedure.

[10] The Modified Amended Statement of Allegations and Staff’s Memorandum have been admitted on this hearing solely as it relates to the Non-Contesting Respondents, Vucicevich, Banumas and Shah.

B. Uncontested Evidence

[11] The evidence in this proceeding, namely, the Modified Amended Statement of Allegations and Staff’s Memorandum, relates to a “pump and dump” scheme, a fraudulent behaviour in which promoters artificially inflate a stock’s price by making false claims about the issuer. In this case, Staff allege that Vucicevich profited by issuing materially misleading statements in press releases and subsequently selling shares into a market inflated by those false press releases. His involvement in this scheme was facilitated and concealed by the use of nominee accounts held by Banumas and Shah. A summary of the uncontested evidence, found below, is based on the Modified Amended Statement of Allegations and Staff’s Memorandum.

[12] The scheme in this case is alleged to have occurred over the period of February 6, 2006 to January 31, 2007 (the “Material Time”) and involved the promotion and sale of shares issued by Sulja Nevada and its predecessor companies. Approximately \$5.6 million (USD) of trading profit was incurred as a result of this scheme.

[13] Sulja Nevada is a company incorporated in the State of Nevada, U.S.A., with a registered office at CRA of America, Inc., 3638 N. Ranchero Drive, Suite 6, Las Vegas, Nevada. It was originally incorporated as Loftwerks, Inc. on April 19, 2005, and then changed its name to Loftwerks, Inc. (“Loftwerks”) on May 4, 2005. It was renamed Sulja Brothers Building Products, Inc. on July 20, 2006 and changed its name to Sulja Bros. Building Supplies, Ltd. on July 21, 2006. Loftwerks was quoted on Pink Sheets, an over-the-counter quotation system in the United States. It continued that quotation as Sulja Nevada and did not trade on any exchange or trading system in Canada.

i. The Role of Vucicevich

[14] Vucicevich is a resident of Colchester, Ontario. He is not registered under the Act to trade securities or to act as an adviser. During the Material Time, Vucicevich engaged in both the promotion and the sale of shares issued by Sulja Nevada and its predecessor Loftwerks (“Sulja Nevada Shares”).

a. Promotion of Sulja Nevada Shares

[15] The means by which Vucicevich promoted Sulja Nevada Shares during the Material Time was to create or cause to be created press releases which would then be broadcast to the market. These press releases contained statements about the company’s merger opportunities, revenue potential and audit arrangements which proved to be false.

[16] From February 2006 to April 2006, Vucicevich issued press releases that made a number of claims about the Loftwerks’ merger opportunities. For example, these press releases claimed that Loftwerks would merge with Sulja Ontario and Consultech Management Inc. (“Consultech”), another company controlled by Vucicevich at all material times. The press releases claimed that the merging companies were negotiating, and would be entering into large and profitable urban renewal contracts in the United States. They also described Sulja Ontario as a division of Consultech and Steven Sulja as an employee of Consultech.

[17] Steven Sulja was not an employee of Consultech, Sulja Ontario was not a division of Consultech, Consultech was not involved in merger discussions with Loftwerks, and Loftwerks never did merge with Sulja Ontario.

[18] The press releases issued during this period also made statements announcing, among other things, that Steven Sulja was the Chief Executive Officer of Sulja Brothers Specialty Building Materials, Ltd. (“Sulja Specialty Building Materials”), and that Loftwerks would merge with variously named Sulja companies, when in fact, Sulja Specialty Building Materials appeared never to have been incorporated, some of the Sulja companies named in the press releases did not exist, and Loftwerks never did merge with any of the Sulja companies. In the end, Loftwerks simply changed its name to Sulja Nevada.

[19] Vucicevich also caused Sulja Nevada to issue press releases containing statements about Sulja Nevada’s revenue potential. After Loftwerks changed its name to Sulja

Nevada, Vucicevich caused Sulja Nevada to issue press releases from April 2006 to November 2006 announcing present and future business opportunities from which Sulja Nevada would earn large revenue. Many of these press releases spoke of contracts for building materials that Sulja Nevada had in the Middle East. However, Sulja Nevada had not entered into these contracts, nor did it ever earn revenue from them.

[20] For example, on September 5, 2006, Vucicevich caused Sulja Nevada to issue a press release (the “September 5 Press Release”) announcing that it had signed a contract (the “Cement Contract”) to supply cement to Ramada General Contracting in Abu Dhabi, one of the United Arab Emirates. The press release stated that the Cement Contract would produce yearly revenues of \$350,000,000.

[21] In fact, the Cement Contract did not exist and Sulja Nevada earned no revenue from it. Sulja Nevada did not correct the September 5 Press Release until it issued another press release dated December 5, 2006, stating that the “concrete commodities mentioned in that release [the September 5 Press Release] were indeed cancelled and no contract, even if drafted to finality, was consummated”.

[22] Yet another example involving press releases caused to be issued by Vucicevich is a series of press releases beginning on December 6, 2006 announcing that Sulja Nevada was pursuing other cement deals in the Middle East. On December 11, 2006, Sulja Nevada issued a press release announcing a cement contract (the “Second Cement Contract”), totalling 25,300,000 tonnes over three years, paying a commission of \$0.90 USD per tonne to Sulja Nevada. In fact, the Second Cement Contract did not exist either, and Sulja Nevada never received the revenue set out.

[23] Finally, Vucicevich also caused Sulja Nevada to issue press releases regarding its audit arrangements. These press releases stated that KPMG and PWC were Sulja Nevada’s auditors, and that Sulja Nevada was negotiating with those firms to handle all of its future SEC filings and reporting. Those press releases were also untrue. Neither KPMG nor PWC had done any work for Sulja Nevada. When advised by those firms that its representations were untrue, Sulja Nevada did not advise investors of the true facts or correct its public disclosure.

b. Sale of Sulja Nevada Shares

[24] Sulja Nevada Shares were issued from the company’s treasury through its transfer agent, Transfer Online, a transfer agent located in Portland, Oregon. After their issuance, the shares were sent electronically to nominee trading accounts controlled by Vucicevich (the “Nominee Accounts”), but held in the names of Banumas and Shah. The Nominee Accounts would then sell Sulja Nevada Shares in the market on Vucicevich’s instructions, at prices inflated by the misrepresentations in the press releases. By using the Nominee Accounts, Vucicevich concealed his involvement in the trading of Sulja Nevada Shares.

[25] Vucicevich continued, until October 2006, the practice of selling shares through the Nominee Accounts, over which he had beneficial control.

ii. The Role of Banumas and Shah

[26] Banumas is a resident of Harrow, Ontario. She was an employee of Kore International during the Material Time.

[27] Pranab Shah is a resident of Windsor, Ontario. He was also an employee of Kore International during the Material Time.

[28] Banumas and Shah participated in the issuance of misleading press releases, described above. Further, Banumas and Shah held Nominee Accounts for the benefit of Vucicevich and traded Sulja Nevada Shares in the market on Vucicevich's instructions, at prices inflated by the misrepresentation in the press releases. By holding Nominee Accounts and trading heavily as nominees for Vucicevich at his behest, Banumas and Shah concealed Vucicevich's involvement in the trading of Sulja Nevada Shares.

3. Issues

[29] This case raises the following issues:

- (i) Did Vucicevich trade Sulja Nevada Shares while not registered in accordance with Ontario securities law, contrary to subsection 25(1)(a) of the Act?
- (ii) Did Vucicevich advise with respect to Sulja Nevada Shares while not registered in accordance with Ontario securities law, contrary to subsection 25(1)(c) of the Act?
- (iii) Did Vucicevich engage in distribution of Sulja Nevada Shares without a prospectus, contrary to subsection 53(1) of the Act?
- (iv) Did Vucicevich directly or indirectly engage or participate in an act, practice or course of conduct relating to Sulja Nevada Shares that he knew or reasonably ought to have known perpetrated a fraud on other persons or companies, contrary to subsection 126.1(b) of the Act?
 - (a) In the alternative, did Vucicevich make statements in press releases being documents required to be furnished under Ontario securities law that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading, contrary to subsection 122(1)(b) of the Act?
 - (b) In the alternative, did Vucicevich directly or indirectly engage or participate in an act, practice, or course of conduct relating to Sulja Nevada Shares that he knew or reasonably ought to have known resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, Sulja Nevada Shares contrary to subsection 126.1(a) of the Act?

- (c) In the alternative, did Vucicevich make statements in press releases of Sulja Nevada that he knew or reasonably ought to have known in a material respect and at the time and in light of all the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading and would reasonably be expected to have a significant effect on the market price or value of Sulja Nevada Shares, contrary to subsection 126.2(1) of the Act?
- (v) Did Banumas and Shah directly or indirectly engage or participate in an act, practice, or course of conduct relating to Sulja Nevada Shares that they knew or reasonably ought to have known resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, Sulja Nevada Shares contrary to subsection 126.1(a) of the Act?

4. Analysis

A. Did Vucicevich breach subsection 25(1)(a) of the Act?

[30] Subsection 25(1)(a) of the Act prohibits trading in securities without being registered:

25(1) Registration for trading – No person or company shall,

(a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

...

and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[31] As set out in the Modified Amended Statement of Allegations, although the Nominee Accounts were held in the names of Banumas and Shah, Vucicevich was the one exercising control over those accounts. It was Vucicevich who in fact directed the sales of Sulja Nevada Shares in the Nominee Accounts. However, he was not registered under the Act to trade securities. Therefore, we find that Vucicevich traded Sulja Nevada Shares without registration, contrary to subsection 25(1)(a) of the Act.

B. Did Vucicevich breach subsection 25(1)(c) of the Act?

[32] In the same vein, subsection 25(1)(c) of the Act prohibits advising without registration:

25(1) Registration for trading – No person or company shall,

...

(c) act as an adviser unless the person or company is registered as an adviser, or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,

and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[33] There is not sufficient, clear and convincing evidence before the Panel to support a finding of conduct by Vucicevich which is contrary to subsection 25(1)(c) of the Act. That allegation is therefore dismissed.

C. Did Vucicevich breach subsection 53(1) of the Act?

[34] Subsection 53(1) of the Act sets out the prospectus requirement for trades that would be a distribution:

53(1) Prospectus required – No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director.

[35] The definition of a “distribution” under subsection 1(1) of the Act is:

“distribution”, where used in relation to trading in securities, means,

(a) a trade in securities of an issuer that have not been previously issued;

...

[36] As discussed above, Sulja Nevada Shares were first issued from the company’s treasury and then sent to the Nominee Accounts to be sold to the public on Vucicevich’s instructions. Sales of Sulja Nevada Shares in the Nominee Accounts as directed by Vucicevich were “distributions” within the meaning of the Act. However, these sales were neither qualified by prospectus, nor was there exemption from the prospectus requirement available to Vucicevich. Therefore, we find that Vucicevich’s actions were in breach of subsection 53(1) of the Act.

D. Did Vucicevich breach subsection 126.1(b) of the Act?

[37] Staff maintain that the essence of the illegal conduct in this matter is a fraud under the Act, set out in subsection 126.1(b):

126.1 Fraud and market manipulation – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,

...

(b) perpetrates a fraud on any person or company.

[38] The deceit, falsehood, or other fraudulent means that make up the fraud in this case was committed by way of market manipulation achieved through the issuance of a series of materially misleading statements in press releases. The uncontested evidence establishes that Vucicevich created or caused to be created press releases containing both misleading and false representations about, among other things, Sulja Nevada’s merger opportunities, revenue potential and audit arrangements.

[39] Vucicevich profited from selling Sulja Nevada Shares into a market inflated by those false press releases, and investors were correspondingly deprived of money paid to purchase the securities. Approximately \$5.6 million (USD) of trading profit was incurred as a result of these misleading press releases, of which \$2,990,000 (CDN) and \$367,000 (USD) accrued to the benefit of Vucicevich.

[40] Accordingly, we find that the Vucicevich’s selling and promoting of Sulja Nevada Shares was in contravention of subsection 126.1(b) of the Act.

E. Did Vucicevich breach subsections 122(1)(b), 126.1(a) and 126.2(1) of the Act?

[41] To avoid unnecessary duplication, it is not necessary to also find that Vucicevich additionally breached subsections 122(1)(b), 126.1(a), and 126.2(1) of the Act, since the conduct establishing Vucicevich’s breach of subsection 126.1(b) encompasses the conduct that would establish those breaches. Nonetheless, we agree with Staff’s submissions that the evidence would also be sufficient to make out breaches of subsections 122(1)(b), 126.1(a), and 126.2(1) of the Act.

F. Did Banumas and Shah breach subsection 126.1(a) of the Act?

[42] Subsection 126.1(a) of the Act provides that:

126.1 Fraud and market manipulation – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or derivative of a security;

...

[43] The uncontested evidence shows that Banumas and Shah participated in the issuance of misleading press releases, which resulted in or contributed to an artificially inflated price for Sulja Nevada Shares. Further, by trading heavily as nominees for the benefit of Vucicevich, Banumas and Shah played a significant role in concealing Vucicevich's involvement in the trading of Sulja Nevada Shares, creating a misleading appearance of trading activity. Therefore, we find that Banumas and Shah breached subsection 126.1(a) of the Act.

5. Conclusion

[44] For the reasons stated above, we find that:

- (i) Vucicevich breached subsection 25(1)(a) of the Act;
- (ii) Vucicevich breached subsection 53(1) of the Act;
- (iii) Vucicevich breached subsection 126.1(b) of the Act; and
- (iv) Banumas and Shah breached subsection 126.1(a) of the Act.

Dated at Toronto at this 28th day of October, 2010.

“Patrick J. Lesage”

“Sinan O. Akdeniz”

Patrick J. LeSage

Sinan O. Akdeniz