



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
ZUNGUI HAIXI CORPORATION, YANDA CAI and FENGYI CAI**

**ORAL REASONS AND DECISION
(Section 127 of the Act)**

Hearing: February 2, 2012

**Oral Reasons
and Decision:** February 2, 2012

Panel: Christopher Portner - Commissioner and Chair of the Panel

Appearances: Johanna Superina - For Staff of the Commission
Carlo Rossi

No one appeared on behalf of the Respondents, Zungui Haixi Corporation,
Yanda Cai and Fengyi Cai.

ORAL REASONS AND DECISION

The following text has been prepared for the purposes of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcripts of the hearing. The excerpts have been edited 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 was a hearing before the Ontario Securities Commission (the “**Commission**”) on February 2, 2012 in relation to a Notice of Hearing issued in connection with a Statement of Allegations filed by Staff of the Commission (“**Staff**”) on November 7, 2011 against Zungui Haixi Corporation (“**Zungui**”), Yanda Cai and Fengyi Cai (collectively, the “**Respondents**”).

[2] I do not view lengthy deliberation on a series of uncontroverted affidavits to be necessary in this matter given the continuous and continuing failure by Zungui to respond in any manner to communications from Staff and the circumstances that preceded those communications involving the interaction of Zungui management and the principal securityholder, Fengyi Cai, with the audit process undertaken by Zungui’s now former auditor, Ernst & Young LLP (“**E&Y**”). The circumstances are deeply troubling and I think it is appropriate that the Commission respond expeditiously without taking the matter under advisement, which I do not think is necessary.

[3] The Panel has before it the uncontroverted affidavit evidence of three former independent directors of Zungui (Affidavit of Elliott Wahle sworn January 25, 2012, Affidavit of Michael Manley sworn January 25, 2012 and Affidavit of Patrick Ryan sworn January 25, 2012), E&Y’s independent audit partner (Affidavit of Hai Ying (Linda) Zhu sworn January 26, 2012), and a senior member of Staff (Affidavit of Peter Cho sworn January 26, 2012). I have read those materials and the attachments with care. I have listened to Staff’s submissions today including submissions on the jurisdiction of the Commission to make orders in this regard (see *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 41, *Re Standard Trustco Ltd.* (1992), 15 O.S.C.B. 4322 at 28 (QL) and *Re Norshield Asset Management (Canada) Ltd.* (2010), 33 O.S.C.B. 2139) and so as to facilitate whatever actions Staff considers appropriate going forward, and in the interest of protecting, to the extent we can, the interests of investors, my findings with respect to Staff’s allegations are as follows:

- (a) Zungui has failed to maintain an audit committee since at least September 22, 2011, contrary to section 2.1 of National Instrument 52-110 – *Audit Committees* and contrary to the public interest.
- (b) Zungui has failed to file audited annual financial statements on or before the 120th day after the end of its most recently completed financial year, contrary to paragraph 4.2(b)(i) of National Instrument 51-102 – *Continuous Disclosure Obligations* and contrary to the public interest.
- (c) Yanda Cai and Fengyi Cai have authorized, permitted or acquiesced in the commission of the violations by Zungui, as set out in paragraphs (a) and (b) above,

contrary to section 129.2 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended and contrary to the public interest.

- (d) Yanda Cai has engaged in conduct contrary to the public interest by imposing limitations on the scope of the audit procedures of Zungui's auditor, E&Y, during its audit of Zungui's financial statements for the year ended June 30, 2011.
- (e) Yanda Cai and Fengyi Cai have engaged in conduct contrary to the public interest by failing to cooperate with Zungui's audit committee and its Special Committee in addressing E&Y's concerns and in obstructing an independent investigation of those concerns by the Special Committee and by KPMG Forensic, which was hired to assist, notwithstanding their original assurance that they would do so, and by failing to respond to Staff inquiries and to produce documents relevant to the business of Zungui that had been requested by Staff on numerous occasions.
- (f) Zungui has engaged in conduct contrary to the public interest by failing to produce documents required by Staff.

[4] Following the hearing and my reasons and decision on the merits, the parties are to contact the Office of the Secretary to schedule dates for a sanctions hearing in this matter.

Approved by the Chair of the Panel on March 7, 2012.

“Christopher Portner”

Christopher Portner