



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 NEST ACQUISITIONS AND MERGERS,
IMG INTERNATIONAL INC., CAROLINE MYRIAM FRAYSSIGNES,
DAVID PAUL PELCOWITZ, MICHAEL SMITH, and
ROBERT PATRICK ZUK**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (the “Commission”) make the following allegations:

I. OVERVIEW

1. This proceeding centres on the solicitation of various residents of the United Kingdom (the “U.K. Residents”) by Nest Acquisitions and Mergers (“Nest A&M”) and IMG International Inc. (a.k.a “Investors Marketing Group International Inc”, collectively, “IMG”) in respect of the sale of securities.

2. Staff allege that the respondents’ course of conduct spanned the period from August 14, 2008 to June 11, 2009 (the “Material Time”).

II. BACKGROUND

A. The Individual Respondents

3. None of the individual respondents were registered in any capacity with the Commission during the Material Time.

4. Caroline Myriam Frayssignes (“Frayssignes”) is a resident of Oakville, Ontario. Frayssignes is the sole proprietor of a business called “Nest”. Frayssignes is one of two signatories to a bank account she set up in the name of Nest at a Royal Bank of Canada branch in Oakville, Ontario (the “Nest Account”).

5. David Paul Pelcowitz (“Pelcowitz”) is a former registrant in various capacities, who was last registered as a trading officer, director and supervisory procedures officer. His registration with the Commission ended on June 27, 2000. Pelcowitz is a resident of Thornhill, Ontario.

6. Michael Smith (a.k.a “Micheal”) (“Smith”) is the sole director and officer of IMG and resides at an unknown address.

7. Robert Patrick Zuk (“Zuk”) is a resident of Oakville, Ontario and is Frayssignes’ boyfriend. He is the other signatory to the Nest Account. Zuk was the subject of an order of the Commission to, among other things, cease trading in securities for a period of 15 years from March 1, 2007 (the “Zuk Order”). Zuk was registered with the Commission in the category of salesperson from February 13, 1987 to November 15, 1990.

B. The Corporate Respondents

8. None of the corporate respondents were registrants in Ontario during the Material Time.

9. IMG was incorporated in Ontario on June 17, 2008. Smith was the sole director and officer of IMG during the Material Time.

10. Nest A&M is a fictitious business, purporting to be based in St. Vincent and the Grenadines.

III. THE ADVANCED-FEE SCHEMES

A. The Solicitations

11. The U.K. Residents received unsolicited phone calls from representatives of Nest A&M or IMG and were told that Nest A&M or IMG had buyers for securities already held by the U.K. Residents.

12. The U.K. Residents were then told that they would have to pay “performance bonds”, “non-resident taxes” and/or fees to remove “share restrictions” to Nest A&M or IMG before Nest A&M or IMG could complete the sale of the securities.

13. Pelcowitz provided documents to the U.K. Residents on behalf of Nest A&M and IMG, which provided details of the proposed sale of the securities, including that the U.K. Residents would receive significant premiums to the value of the securities held by them. The documents also detailed the wire-transfer information for, in the case of Nest A&M, the Nest Account, and, in the case of IMG, the U.K. Residents were instructed to send funds to a bank account in the name of IMG at the Parama Lithuanian Credit Union located in Toronto, Ontario (the “IMG Account”).

14. The U.K. Residents sent their “performance bond” or other advance-fee funds via wire transfer to the Nest Account or the IMG Account.

15. The U.K. Residents were subsequently approached and advised they would have to pay further fees so that the transactions could proceed. When the U.K. Residents refused to send further funds to either the Nest Account or the IMG Account, they stopped receiving communications from representatives of Nest A&M or IMG.

16. None of the transactions for which the U.K. Residents wired funds to the Nest Account or the IMG Account have been completed.

17. During the Material Time, Smith, Pelcowitz, Zuk and Frayssignes misappropriated the funds obtained from the U.K. Residents.

18. The respondents participated in acts, solicitations, conduct, or negotiations directly or indirectly in furtherance of the sale or disposition of securities for valuable

consideration, in circumstances where there were no exemptions available to the respondents under the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the “*Act*”).

B. Fraudulent Conduct

19. During the Material Time, Smith, Pelcowitz and other employees, representatives or agents of Nest A&M or IMG provided information to the U.K. Residents that was false, inaccurate and/or misleading, including, but not limited to, the following:

- (a) that Nest A&M or IMG could arrange to sell securities held by the U.K. Residents for significant premiums over the current market value of the securities;
- (b) that Nest A&M or IMG had received funds from the purported purchasers of the securities held by the U.K. Residents and that these funds were being “sequestered in our Trust Account”;
- (c) that within three business days of the U.K. Residents providing advance fees they would receive all of the funds for the sale of their securities;
- (d) that the funds were “fully refundable”; and
- (e) that certain U.K. Residents were offered a five percent discount on a “non-resident tax” because the U.K. Residents were over sixty-five years old.

20. The false, inaccurate and misleading representations were made with the purported intention of effecting trades in the securities belonging to the U.K. Residents.

21. Once funds were wire transferred by the U.K. Residents to the Nest Account or the IMG Account the funds were withdrawn as cash or cheques, which were primarily payable or provided to Pelcowitz, Zuk, Frayssignes, David O’Brien Professional Legal Corp., and others.

22. The respondents and other employees, representatives or agents of Nest A&M or IMG engaged in a course of conduct relating to securities that they knew or reasonably ought to have known would result in a fraud on persons.

IV. MISLEADING STATEMENTS MADE TO THE COMMISSION

23. Frayssignes gave evidence to Commission Staff appointed to investigate this matter on July 16, 2009, which contained materially misleading and/or untrue statements, contrary to s. 122(1)(a) of the *Act*, relating to the following:

- (a) the source of funds received into the Nest Account;
- (b) the disposition of funds received into the Nest Account; and
- (c) whether she had received instructions to purchase securities of an Over-The-Counter issuer called Church and Crawford.

24. Zuk gave evidence to Commission Staff appointed to investigate this matter on November 12, 2009, which contained materially misleading and/or untrue statements, contrary to s. 122(1)(a) of the *Act*, relating to the following:

- (a) the source of funds received into the Nest Account;
- (b) the disposition of funds received into the Nest Account; and
- (c) his knowledge concerning Church and Crawford and whether he instructed Frayssignes to purchase its securities.

V. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

25. The specific allegations advanced by Staff are:

- (a) During the Material Time, the respondents traded in securities without being registered to trade in securities, contrary to section 25(1)(a) of the *Act*;

(b) During the Material Time, the respondents engaged or participated in acts, practices or courses of conduct relating to securities that the respondents knew or reasonably ought to have known perpetrated a fraud on persons, contrary to section 126.1(b) of the *Act*;

(c) During the Material Time, Smith, being the sole director and officer of IMG, did authorize, permit or acquiesce in the commission of the violations of sections 25 and 126.1 of the *Act*, as set out above, by IMG or by the employees, agents or representatives of IMG, pursuant to section 129.2 of the *Act*;

(d) Frayssignes gave evidence to Commission Staff appointed to investigate this matter on July 16, 2009, which contained materially misleading and/or untrue statements, contrary to s. 122(1)(a) of the *Act*;

(e) Zuk gave evidence to Commission Staff appointed to investigate this matter on November 12, 2009, which contained materially misleading and/or untrue statements, contrary to s. 122(1)(a) of the *Act*;

(f) During the Material Time, Zuk breached the Zuk Order by trading in securities, contrary to section 122(1)(c) of the *Act*; and

(g) The above-described conduct of the respondents was contrary to the public interest.

26. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED AT TORONTO this 18th day of January 2010.