

ALBERTA SECURITIES COMMISSION
SETTLEMENT AGREEMENT AND UNDERTAKING

Citation: Besaw, Re, 2010 ABASC 86

Date: 20100226

Docket: E/03797

Securities Act, R.S.A. 2000, c. S-4, as amended (Act)

Gerard Besaw

Agreed Facts

Introduction

1. The staff of the Alberta Securities Commission (respectively, **Staff** and **Commission**) conducted an investigation into allegations that Gerard Besaw (**Besaw**) and others breached Alberta securities laws, as that term is defined in the *Act*, by engaging in illegal trades and distributions of securities of The Hear Now Inc. (**THN**) in breach of the *Act* and thus acted contrary to the public interest.
2. The investigation confirmed and Besaw admits that he breached the sections of the *Act* set out below and acted contrary to the public interest.
3. Solely for the purposes of the regulation of securities in Alberta, and elsewhere, and as the basis for the settlement set out below, Besaw makes the admissions set out in this Settlement Agreement and Undertaking (**Agreement**).
4. Terms used in this Agreement have the same meaning as provided for in Alberta securities laws, as that term is defined in the *Act*.

Gerard Besaw

5. Besaw is an individual who resides in Calgary, Alberta. At all material times, Besaw was a director of THN.
6. Besaw has never been registered, in any capacity, with the Executive Director of the Commission.
7. Besaw has never filed a preliminary or final prospectus with and received a receipt from the Executive Director of the Commission in connection with a distribution of securities of THN.

Circumstances –Illegal Distribution

8. THN is a Canadian corporation that has been extra-provincially registered in Alberta since 2005. During the material time period, THN carried on business as a developer and distributor of high-tech pet products.
9. Besaw indicates he was not a founder of THN: rather his initial involvement in THN was as an investor, after which he was approached by other individuals at THN to become more involved in the company.
10. Capital was raised for THN at least in part through investments in THN through purchases of shares in companies variously termed “Investment Clubs” or “Financial Clubs” (**Investment Clubs**).
11. Besaw suggested to the other principals of THN that the Investment Club model could be used to raise capital for the company. He indicates he has seen a similar model employed in a previous undertaking and he states that he believed it could be applied to THN.
12. Besaw oversaw the implementation of the Investment Club capital raising model at THN.
13. Besaw admits that, to the best of his understanding, the Investment Club capital raising model operated in the following way:
 - 13.1. Varying amounts of THN Class A voting stock were sold to each Investment Club at a cost of \$4.00 a share;
 - 13.2. The creators of the various Investment Clubs sold stock in their respective companies to individual investors at a cost of \$7.00 a share;
 - 13.3. The creators of the various Investment Clubs to remitted some or all of the proceeds realized from the sale of Investment Club stock directly to THN;
 - 13.4. The creators of the individual Investment Clubs were advised to tell investors that dividends realized by the Investment Clubs on THN stock would, in turn, be passed on to subscribers by the issuance of dividends on the stock of the individual Investment Clubs.
14. Besaw admits that the vast majority of capital raised for THN was obtained through the “Investment Club” model.
15. Besaw states he did not personally oversee the day to day operation of all THN Investment Clubs, although he was aware of their existence and operation at the material time and he was provided with periodic reports regarding how much capital was being raised through the operation of Investment Clubs.
16. Besaw admits that approximately CAD\$6,600,000 worth of investment in THN common stock was obtained through the operation of Investment Clubs and that he or entities that he

controlled received at least CAD\$1,200,000 , in commissions as a result of their involvement the implementation and oversight of the Investment Club model.

17. Besaw states that the all the commissions earned by him or entities controlled by him as a result of their involvement in the distribution of THN securities were subsequently advanced to the company in the form of a shareholder loan.
18. Besaw never filed any Reports of Exempt Distribution with the Commission in connection with the distribution of THN securities, or otherwise attempted to formally claim any of the registration or prospectus exemptions available under Alberta securities laws in connection with the distribution of THN securities.

Circumstances – Prohibited Representations

19. Besaw admits that, acting in his capacity as a director of THN, he represented to Alberta investors that:
 - 19.1. they could expect to receive a return on investment of 119% by the fourth quarter of 2008; and
 - 19.2. THN common stock would pay dividends of \$60.00 per share by December of 2010.

Summary of Breaches

20. Besaw admits that he breached s. 75 of the *Act* by trading in, and engaging in a distribution of, the securities of THN while not registered in accordance with the *Act*, and without the benefit of an applicable exemption from this requirement.
21. Besaw admits that he breached s. 110 of the *Act* by engaging in a distribution of the securities of THN without a prospectus, and without the benefit of an applicable exemption from this requirement.
22. Besaw admits that he breached s.92(4.1) of the *Act* by making statements to investors that were prohibited representations under the Act, by indicating a rate of return on investment and a payment of dividends, as referred to in paragraph 19 above, without fully and properly indicating the appropriate level of market risk associated therewith.
23. Besaw admits that his conduct during the material time, as described above, was contrary to the public interest.

Settlement Payments and Undertakings

24. Based on these facts and admissions, Besaw agrees to pay to the Commission the amount of \$100,000 to settle the allegations against him and the amount of \$5,000 for costs of the investigation.

25. Besaw shall pay the Commission \$80,000 at the time of the execution of the within Agreement and the balance of \$25,000 payable within 10 months of the date of the within Agreement. In furtherance thereof, Besaw agrees to execute the Promissory Note Attached as Schedule "A" to this Agreement.
26. Besaw further undertakes to the Executive Director of the Commission as follows:
 - 26.1. Besaw shall resign from any position that he now holds as a director or officer of an Issuer, as that term is defined in the *Act*, and shall refrain from acting as an officer or director of an Issuer for a period of ten (10) years from the date of execution of the within Agreement;
 - 26.2. Other than purchasing or trading in securities in a registered account for his benefit through a registrant who has first been given a copy of this Agreement, Besaw shall refrain from purchasing or trading in securities and exchange contracts, as those term is defined in the *Act*, and shall not attempt to benefit from any exemptions otherwise available to him under Alberta securities laws, for a period of ten (10) years from the date of execution of the within Agreement.

Administration

27. Besaw acknowledges that he has sought and received independent legal advice and that he has voluntarily made the admissions herein.
28. Besaw waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
29. Besaw acknowledges that this Agreement may be referred to solely for securities regulatory purposes in Alberta and elsewhere.
30. Subject to paragraph 25 above, this Agreement resolves all issues involving Besaw as described in the above paragraphs, and Staff will take no further steps against him arising from these facts.

31. The Agreement may be executed by facsimile and in counterpart.

Signed by GERARD BESA W at Calgary,)
Alberta this)
26th day of February 2010, in the)
presence of:)

"John Blair")
WITNESS NAME)

"original signed by")
SIGNATURE)

"original signed by")
GERARD BESA W)

) ALBERTA SECURITIES COMMISSION

Calgary, Alberta, 26th February 2010)

) "original signed by")

) John P. Petch)
) Director, Enforcement)

Schedule "A"

PROMISSORY NOTE

PRINCIPAL AMOUNT: CAD \$25,000

FOR VALUE RECEIVED, the undersigned, Gerard Besaw (the "**Payor**"), hereby acknowledges himself indebted and promises to pay to or to the order of the Alberta Securities Commission (the "**Holder**") the principal sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) in lawful money of Canada (the "**Principal Amount**"), bearing interest at the rate equal to the applicable rate of interest set forth in the Alberta *Judgment Interest Act*, R.S.A. 2000, c. J-1.

The Payor shall pay the Principal Amount, plus all accrued interest, on or before December 24, 2010.

The Payor shall have the right, at any time and from time to time, to pre-pay all or any part of the unpaid Principal Amount without notice and without payment of any premium or penalty.

The Payor hereby waives all rights of presentment for payment, notice of non-payment, notice of protest and any other notice of any kind.

The provisions of this Promissory Note shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein, excluding conflicts of laws principles.

DATED at the City of Calgary in the Province of Alberta effective this 24th day of February, 2010.

"original signed by"

GERARD BESAW