ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Multi-Corp. International Inc., 2015 ABASC 558 **Date: 20150209**

Multi-Corp. International Inc. and Robert Baker

Panel:	Tom Cotter Webster Macdonald, QC Ann Rooney, FCA
Representation:	Heather Currie for Commission Staff Norman Anderson for the Respondents
Submissions Completed:	December 11, 2014
Decision:	February 9, 2015

I. INTRODUCTION

[1] Multi-Corp. International Inc. (**Multi-Corp**) and Robert Baker (**Baker** and, together with Multi-Corp, the **Respondents**) are the subject of a notice of hearing issued by staff (**Staff**) of the Alberta Securities Commission (the **ASC**), pursuant to which a hearing was convened to consider whether it is appropriate to make orders under sections 198, 199 and 202 of the *Securities Act* (Alberta) (the **Act**) against the Respondents.

[2] Staff alleged that Multi-Corp breached Alberta securities laws by failing to comply with a cease-trade order issued by the ASC and to file a report of exempt distribution (**Distribution Report**) with the ASC. Staff further alleged that Baker, as the guiding mind of Multi-Corp, "caused, authorized, and/or permitted" these breaches to occur. Staff also alleged that the Respondents' misconduct constituted conduct contrary to the public interest.

[3] The only evidence received at the hearing was a "Statement of Admissions and Joint Recommendation as to Sanction" signed by the parties (the **Statement**).

II. FACTUAL BACKGROUND

[4] The following is a summary of the admitted facts.

[5] Multi-Corp is a Nevada corporation in the business of oil and gas exploration and production. In the relevant period – from June 11, 2012 to March 1, 2013 – its common shares (**Shares**) were quoted for trading on the United States (**US**) Over The Counter Bulletin Board, and Baker, a resident of Calgary, Alberta, was its president, chief executive officer, secretary, treasurer and sole director. After the relevant period these positions with the company were assumed by an individual evidently resident in the US.

[6] On December 4, 2012 the ASC ordered that trading or purchasing cease in respect of any security of Multi-Corp until the order was revoked or varied (the **CTO**). The CTO was issued as a result of Multi-Corp's failure to comply with continuous disclosure reporting requirements for the interim period ending September 30, 2012 in accordance with Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (**MI 51-105**).

[7] On December 17, 2012 Multi-Corp entered into two asset purchase agreements with another Nevada corporation (with a president and director resident in Medicine Hat, Alberta). Through these agreements Multi-Corp acquired certain natural gas working interests in New Mexico and drilling equipment for which it issued to the vendor 12 million Shares, valued at $1.60 per Share (the **Transaction**).

[8] Multi-Corp reported to the US Securities and Exchange Commission that the Transaction occurred on December 17, 2012. Multi-Corp announced the acquisitions in news releases issued on December 17 and 20, 2012.

[9] On December 20, 2012 the ASC received an application for revocation of the CTO, which application was denied on January 23, 2013. To date the CTO has not been revoked or varied.

III. MERITS OF THE ALLEGATIONS

[10] Section 93.1 of the Act provides:

> A person or company shall comply with decisions of the [ASC] or the Executive Director made under Alberta securities laws.

[11] As noted, Calgary-resident Baker was the sole director and officer of Multi-Corp in the relevant period. An "OTC reporting issuer" within the meaning of MI 51-105 includes an "OTC issuer" whose business on or after July 31, 2012 has been directed or administered in or from the local jurisdiction – in this case Alberta. We were also told (and this was not disputed) that Baker executed the mentioned asset purchase agreements on behalf of Multi-Corp at his counsel's office in Calgary. Accordingly and given the definitions of "security", "trade" and "decision" in the Act, we find (consistent with the Statement) that the Shares were securities within the meaning of the Act, that the Transaction constituted trades in securities of Multi-Corp within the meaning of the Act, that the Transaction was in violation of the CTO, and that this violation of the CTO by Multi-Corp was a contravention of section 93.1 of the Act. We also find (consistent with the Statement) that Baker authorized Multi-Corp's contravention of the CTO in his capacity as director and officer of the company.

[12] The Respondents admitted in the Statement that they failed to file a Distribution Report with the ASC, and thus that Multi-Corp contravened section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) and Baker in his capacity as director and officer of the company authorized this contravention. We could infer, from the Statement, purported reliance on the asset acquisition prospectus exemption set out in section 2.12 of NI 45-106, and perhaps the petroleum, natural gas and mining properties prospectus exemption set out in section 2.13. However, there is logical difficulty with the allegations and admissions concerning a contravention of section 6.1 of NI 45-106 – they presuppose that an issuer could rely on a prospectus exemption for a distribution (and thus would be required to file a Distribution Report) when the antecedent trade is prohibited by virtue of a cease-trade order. Having found that the Transaction constituted trades in contravention of the CTO, and in the absence of any argument from the parties on the issue, we make no finding on the allegations concerning a contravention of section 6.1 of NI 45-106.

[13] The Respondents also admitted in the Statement that they acted contrary to the public interest "in connection with the . . . admitted breaches". Having made findings only with respect to contravention of the CTO, we confine our public interest remarks to such contravention.

[14] The purpose of a cease-trade order such as the CTO was articulated in *Re Dobler*, 2004 ABASC 927 (at para. 111):

> An order such as the CTO is not a punishment; it is a protective measure of broad application designed to prevent harm to the investing public that might arise when securities are traded in the face of a deficient public information record. The objective, and the effect, is to block all trading in the affected securities, irrespective of purpose or motivation, until the information deficiency is remedied and all investors are in a position to make informed investment decisions in a market that operates fairly. Exceptions . . . are permitted only when the [ASC] is satisfied that the public interest is not impaired. Unless such an exception applies, the order applies to everyone.

[15] As noted, the ASC received an application for revocation of the CTO proximate in time to the admitted contravention of the CTO. Such an application could succeed only if the ASC considered that it would not be prejudicial to the public interest to order revocation, and in this case the application was dismissed. In light of the protective purpose of the CTO and the

circumstances of its violation, we find (consistent with the Statement) that the Respondents acted contrary to the public interest in connection with the admitted contravention of the CTO.

IV. SANCTIONS AND COSTS ORDER

A. Joint Recommendation

[16] The Statement included a joint recommendation from the parties as to appropriate sanctions and an appropriate costs order in this matter, as follows:

- Baker cease trading in or purchasing securities for four years;
- Baker resign all positions he holds as a director or officer of any issuer, and refrain from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for four years;
- Baker pay an administrative penalty of $20,000; and
- Baker pay investigation costs of $5,000.

B. Appropriate Sanctions

[17] It is trite that the ASC's sanctioning powers are protective and preventative, not punitive or remedial: *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45. As has often been stated, their aim is protecting investors and our capital market by preventing future harm, whether caused by the named respondents (specific deterrence) or others (general deterrence): *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62; and *Re Podorieszach*, 2004 ABASC 567 at para. 17.

[18] Relevant sanctioning factors may include those recently enumerated in *Re Hagerty*, 2014 ABASC 348 (at para. 11):

- the seriousness of the respondent's misconduct and the respondent's recognition of that;
- the respondent's characteristics and history, such as capital-market experience and any prior sanctions;
- any benefit sought or obtained by the respondent, and any harm to which the capital market generally or investors were exposed by the misconduct;
- the risk to investors and the capital market if the respondent were to go unsanctioned or if others were to emulate the respondent's misconduct; and
- any mitigating considerations.

[19] Although not obliged to do so, a hearing panel will generally order jointly-recommended sanctions if it is satisfied that they fall within a range of sanctions that are reasonable in all the circumstances and consistent with the ASC's public interest mandate: *Re Rogers*, 2013 ABASC 484 at para. 62.

[20] We consider contravention of an ASC order imposed with a view to protecting investors and the integrity of our capital market, such as the CTO, to be a serious matter. Wilful disregard

of such an order erodes market confidence, affecting the willingness of the public to invest and the ability of law-abiding issuers to raise capital: *Re Dobler*, 2004 ABASC 1178 at para. 32.

[21] It was acknowledged that the Transaction occurred with knowledge of the CTO. We were told that Multi-Corp received legal advice from US counsel to the effect that it was bound to consummate the Transaction. It was conceded that Multi-Corp was not liable to pay a break fee (nor apparently would it forfeit a deposit) if the Transaction did not close, but we were told that Multi-Corp had assumed and perhaps discharged certain financial obligations (no amounts were specified) of its insolvent predecessor in interest in the subject assets. Although we recognize that Baker may have considered there to be a business imperative for Multi-Corp to close the Transaction, we are satisfied from the evidence and submissions that Baker fully knew and understood that completing the Transaction would be in violation of the CTO. This calls for significant sanction.

[22] Staff submitted that, with the CTO extant, it is appropriate that any sanctions we impose be confined to Baker so that Multi-Corp's current shareholders are not "penalized for the acts of [Baker] during his governance of the company". After the relevant period Baker ceased to be a director and officer of Multi-Corp; these roles were assumed by an American resident. We were told that all of Baker's Shares have been returned to treasury and cancelled. In the circumstances we are satisfied that no further orders with respect to Multi-Corp are necessary in order to protect investors and the Alberta capital market.

[23] We acknowledge that by signing and tendering the Statement Baker recognizes the seriousness of his capital-market misconduct, which suggests a diminished need for specific deterrence.

[24] Baker does not have a sanctioning history with the ASC. However, given his roles as a director and officer of a public issuer, we do not consider the absence of a sanctioning history to be a mitigating consideration.

[25] We have already remarked on the harm occasioned to our capital market as a result of the contravention of the CTO. Such harm argues for sanction. That said, we note that there was no evidence of any direct financial harm to investors arising therefrom. Nor was there evidence of any benefit accruing to Baker as a result – on the contrary, he has evidently incurred some loss in returning his Shares for cancellation.

[26] The circumstances overall warrant the imposition of sanctions that, even moderated as discussed, will deliver sufficient measures of specific and general deterrence.

[27] The jointly-recommended director-and-officer bans under sections 198(1)(d) and (e) of the Act lacked symmetry – resigning as a director or officer of any issuer only, but not acting as a director or officer of any issuer, registrant or investment fund manager. Questioned about this, the parties did not take issue with the scope of the former being expanded to correspond with the latter.

[28] Ultimately, we are satisfied that the sanctions jointly recommended by the parties, with the bans being operative from the date of this decision and with the director-and-officer ban

change as discussed, are in the public interest, being within a range of sanctions that we consider appropriate and proportionate in all the circumstances.

C. Appropriate Costs Order

[29] Orders for payment of costs under section 202 are not sanctions, but are intended to recover investigation and hearing costs incurred by Staff that would otherwise be borne indirectly by law-abiding market participants: *Re Marcotte*, 2011 ABASC 287 at para. 20. According to the Statement, the Respondents cooperated with Staff in entering into the Statement, and the Statement saved the time and expense associated with a contested hearing. We agree with the parties that Baker should bear some responsibility for investigation costs, and with no evidence to the contrary we accept as reasonable the recommended costs order.

V. ORDERS

[30] For the reasons given, we make the following orders:

- under section 198(1)(b) of the Act, Baker must cease trading in or purchasing securities, until and including February 9, 2019;
- under sections 198(1)(d) and (e), Baker must resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager, until and including February 9, 2019;
- under section 199, Baker must pay an administrative penalty of $20,000; and
- under section 202, Baker must pay $5,000 of the costs of the investigation.

[31] This proceeding is concluded.

February 9, 2015

For the Commission:

"original signed by"
Tom Cotter

"original signed by"
Webster Macdonald, QC

"original signed by"
Ann Rooney, FCA