

ALBERTA SECURITIES COMMISSION

DECISION

Citation: CMKM Diamonds, Inc., Re, 2008 ABASC 297

Date: 20080513

CMKM Diamonds, Inc.

Panel: Glenda A. Campbell, QC
Stephen R. Murison

Appearing: Deanna Steblyk
for Commission Staff

Kevin West, C.E.O. and President of the
Respondent
for the Respondent

Date of Decision: 13 May 2008

I. INTRODUCTION

[1] This proceeding originated in a notice of hearing issued on 10 March 2008 by staff ("Staff") of the Alberta Securities Commission (the "Commission"). The notice of hearing indicated that Staff sought orders against CMKM Diamonds, Inc. ("CMKM") under section 198(1.1) of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act"), which provides for the reciprocation of orders made by other authorities. The notice of hearing referred to orders issued against CMKM by securities regulatory authorities in Saskatchewan and Manitoba.

[2] The hearing in this matter was scheduled to be held on 9 April 2008. However, shortly before that date, the panel was advised by counsel for Staff that CMKM did not intend to attend the hearing and consented to the Commission's issuing certain orders. Staff therefore proposed that this matter be dealt with in writing. The panel concurred.

[3] Our decision and reasons follow.

II. BACKGROUND

A. Evidence

[4] The panel received a copy of a memorandum dated 1 April 2008 from counsel for Staff (the "Staff Memorandum"), to which were appended: (i) a copy of a letter from CMKM, dated 25 March 2008 and addressed to the attention of counsel for Staff (the "Consent Letter"); (ii) a "Certified Statement" of the Commission's corporate secretary dated 10 March 2008; and (iii) a draft form of the order sought by Staff.

[5] The panel also received two affidavits: (i) an affidavit sworn on 17 March 2008 by a Staff investigative counsel (the "DV Affidavit"); and (ii) an affidavit of service attesting to Staff's service of the notice of hearing and DV Affidavit on CMKM. Among the exhibits to the DV Affidavit were: copies of two orders issued by the Saskatchewan Financial Services Commission, Securities Division (the "SFSC") on, respectively, 26 October 2004 (the "First SFSC Order") and 9 November 2004 (the "Second SFSC Order"); and a copy of an order issued by The Manitoba Securities Commission (the "MSC") on 31 October 2007 (the "MSC Order").

[6] The Certified Statement indicated that CMKM has never been registered to trade securities in Alberta and has never filed a prospectus with the Commission.

[7] The Consent Letter set out CMKM's acknowledgements that it: had been served with the notice of hearing and DV Affidavit; had the opportunity to consult with legal counsel; and was aware that it had the right to a full hearing in this matter but waived that right. CMKM consented to a Commission order reciprocating the MSC Order and Second SFSC Order under sections 198(1)(a) and (c) of the Act.

[8] The Staff Memorandum indicated Staff's position that the material before the panel sufficed to support the orders sought by Staff.

[9] The Consent Letter, Certified Statement and DV Affidavit formed the evidentiary basis for our decision. We considered, as written submissions, Staff's position as expressed in the Staff Memorandum, and CMKM's position on Staff's request for orders as expressed in the Consent Letter.

B. First and Second SFSC Orders

[10] The First SFSC Order referred to indications of trading in securities (including securities of CMKM) without registration, a prospectus or evidence of registration and prospectus exemptions, and indications of misrepresentations made with the intention of effecting trades, on the part of persons and companies including CMKM. The SFSC decision-maker found it to be in the public interest to order the cessation of trading "in all securities by and of" CMKM and the other respondents in that proceeding, and that they be denied certain exemptions under Saskatchewan securities laws, until 9 November 2004.

[11] The Second SFSC Order extended the First SFSC Order until the SFSC is provided with satisfactory evidence to enable it to make a further order in the matter.

[12] The DV Affidavit indicated that the First and Second SFSC Orders remain in effect.

C. MSC Order

[13] The MSC Order indicated that it was issued in response to the Second SFSC Order and with CMKM's consent. The MSC Order directed that all trading in the securities of CMKM cease, and withdrew the application of specified provisions of Manitoba securities laws from CMKM, until otherwise ordered by the MSC. The DV Affidavit indicated that the MSC Order remains in effect.

D. Alberta Shareholdings

[14] The DV Affidavit indicated that CMKM is a Texas corporation, and the Consent Letter gave a Texas address for the company. However, the DV Affidavit also indicated that CMKM has issued shares to Alberta investors.

III. ANALYSIS

A. Statutory Preconditions to Reciprocal Orders

[15] Section 198(1.1) of the Act states, in part:

(1.1) The Commission may, after providing an opportunity to be heard, make an order under subsection (1)(a) to (h) in respect of a person or company if the person or company

...

- (c) is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person or company, or
- (d) has agreed with a securities regulatory authority in Canada or elsewhere to be subject to sanctions, conditions, restrictions or requirements.

[16] The Consent Letter confirmed that CMKM has been given the opportunity to be heard. The first of the two statutory preconditions to the application of section 198(1.1) of the Act is thus satisfied.

[17] The SFSC and MSC are both securities regulatory authorities. By reason of the First and Second SFSC Orders and the MSC Order, CMKM is subject to orders – made by securities regulatory authorities – that impose sanctions, conditions, restrictions or requirements. Moreover, by its consent to the MSC Order, CMKM agreed to be subject to sanctions, conditions, restrictions or requirements in Manitoba. The second statutory precondition to the application of section 198(1.1) of the Act is thus satisfied.

B. Public Interest Considerations

[18] As stated in previous decisions of this Commission (see, for example, *Re Oslund*, 2006 ABASC 1295 at para. 20), even if the statutory preconditions to a reciprocal order are met, an order will be made only if the decision-maker considers it to be in the public interest.

[19] The evidence persuades us that CMKM has traded its securities in several jurisdictions including Alberta. The evidence further indicates that CMKM has traded its securities in Alberta without complying with Alberta securities laws. Evidence as to how CMKM securities were traded in Saskatchewan led the SFSC to conclude that indefinite cease-trade and denial-of-exemptions orders against CMKM (among others) were in the public interest. We note that those orders, and the reciprocal MSC Order, remain in effect. CMKM itself has consented to this Commission's reciprocation of the MSC Order and Second SFSC Order under sections 198(1)(a) and (c) of the Act.

[20] We believe it reasonable to conclude that orders against CMKM will serve a protective purpose in Alberta, sufficient to warrant the application of our public interest authority under sections 198(1) and (1.1) of the Act.

[21] The MSC Order and Second SFSC Order are both of indefinite duration. In the circumstances we consider that it is in the public interest that the orders we make in Alberta be of similarly indefinite duration.

IV. ORDERS

[22] For the reasons given, pursuant to sections 198(1.1) and 198(1)(a) and (c) of the Act we order that, unless and until otherwise ordered by this Commission:

- all trading in or purchasing of securities of CMKM must cease; and
- all of the exemptions contained in the Alberta securities laws do not apply to CMKM.

[23] This proceeding is concluded.

13 May 2008

For the Commission:

"original signed by"

Glenda A. Campbell, QC

"original signed by"

Stephen R. Murison