

**In the Matter of Staff's Recommendation
to Refuse to Amend the Registration
of Hanane Bouji**

**Opportunity to be Heard by the Director pursuant to
Section 31 of the *Securities Act***

Decision

1. For the reasons outlined below, my decision is to refuse the application to amend the registration of Hanane Bouji (“**Ms Bouji**”).
2. My decision is based on the written submissions of Michael Denyszyn, Senior Legal Counsel, Compliance and Registrant Regulation Branch of the Ontario Securities Commission (the “**OSC**”) for Staff, and Kevin Richard of Groia & Company, counsel for Ms Bouji.

Background

3. Ms Bouji has applied to amend her registration pursuant to section 27(1) of the *Securities Act* (Ontario) (the “**Act**”) by adding the category of ultimate designated person (“**UDP**”) in respect of Global RESP Corporation (“**Global RESP**”) and Global Growth Assets Inc. (“**GGAI**”, and collectively with Global RESP, the “**Global Applicants**”) (the “**Application**”).
4. Ms Bouji’s father, Issam El-Bouji (also known as Sam Bouji and referred to herein as “**Mr. Bouji**”), is the sole shareholder and former UDP of both **Global Applicants**. Following a settlement agreement (the “**Settlement Agreement**”),¹ the Commission issued an Order dated April 16, 2014 applicable to, among other related parties, Mr. Bouji and the Global Applicants (the “**Order**”).² Among other things, the Settlement Agreement and Order required that a new and independent UDP be appointed to replace Mr. Bouji in that capacity. That individual, David Prestwich (“**Mr. Prestwich**”), now wishes to retire.
5. The Global Applicants filed the Application on Ms Bouji’s behalf on February 17, 2017. In a letter dated April 13, 2017, OSC Staff (“**Staff**”) communicated its recommendation that the Application be refused.³ In response, the Global Applicants filed a Motion for Directions and Other Relief (the “**Motion**”) in which the firms sought to have the Commission confirm that the Order does not require that any UDP appointed after Mr. Bouji’s successor must be independent, and moreover to order the Director to grant the Application and amend Ms

¹ Settlement Agreement Between Staff of the Ontario Securities Commission and Issam El-Bouji, Global RESP Corporation, Global Growth Assets Inc., Global Educational Trust Foundation and Margaret Singh, dated April 16, 2014.

² Order *in re* Issam El-Bouji, Global RESP Corporation, Global Growth Assets Inc., Global Education Trust Foundation and Margaret Singh, dated April 16, 2014.

³ Letter from Deputy Director Elizabeth A. King to Hanane Bouji dated April 13, 2017.

Bouji's registration as requested. The Motion was dismissed on May 2, 2017⁴ (the "**Dismissal Order**"). Consequently, the Application is once again before the Director.

6. On May 12, 2017, Staff made written submissions recommending that I refuse the Application. Staff made further written submissions on June 12, 2017, responding to questions that I had concerning the first submissions. Staff is of the view that the proposed registration of Ms Bouji as UDP of the Global Applicants is objectionable given the terms of the Order and in light of Mr. Bouji's ongoing active involvement in the business of Global RESP.

Submissions from Staff

Overview

7. Staff take no position on whether Ms Bouji is suitable for the amended registration, but Staff nonetheless recommends that the Application be refused because the amended registration is otherwise objectionable based on the submissions discussed below.
8. In the Order, the Commission imposed serious sanctions on Mr. Bouji as a result of his misconduct while UDP of the Global Applicants, including substantial restrictions on his ability to be involved in the business of the Global Applicants.
9. Certain of the restrictions on Mr. Bouji in the Order were designed to provide some protection against him using indirect influence to do what he was not permitted to do himself, by virtue of the various sanctions imposed on him.
10. Although these restrictions on Mr. Bouji set out in the Order are still in place, the Global Applicants are seeking to register Ms Bouji, who is not independent of Mr. Bouji, to assume the UDP role.
11. Staff has obtained evidence, including admissions by Ms Bouji under oath, that Mr. Bouji remains actively involved in the business of Global RESP notwithstanding the restrictions in the Order.
12. In the Settlement Agreement, the parties agreed to a number of sanctions that were made subject to the Order. Mr. Bouji was, among other things:
 - reprimanded
 - permanently suspended as UDP of Global RESP and GGAI
 - required to resign as a director or officer of Global Education Trust Foundation (the "**Foundation**") and of any registrant or investment fund manager ("**IFM**")
 - prohibited for nine years from becoming or acting as a director or officer of any reporting issuer, registrant, IFM or the Foundation

⁴ *Re Issam El-Bouji et al.*, (2017) O.S.C.B. 4267.

- permanently prohibited from becoming or acting as a UDP or chief compliance officer of any registrant or IFM
13. Mr. Bouji’s nine year prohibition on becoming or acting as a director or officer will not expire until April 14, 2023. Although the Order specified that both Global RESP and GGAI were required to appoint a new UDP to replace Mr. Bouji, and that the new UDP was to be “independent” defined with reference to National Instrument 52-110 *Audit Committees* (“**NI 52-110**”)⁵, the Order did not specify whether any subsequent UDP was similarly required to be independent of Mr. Bouji.
14. I note that Staff told the Global Applicants in an e-mail sent in November 2015 that although Ms Bouji and her sister were free to be involved in the business of the Global Applicants, should Mr. Prestwich depart, “it appears that a new independent UDP will be required to act until the members of the Bouji family are free to assume the role,” which in Staff’s view would be after the first phase of the sanctions against Mr. Bouji concluded.⁶

Staff submission that Ms Bouji is not independent of Mr. Bouji

15. Staff submits that Ms Bouji is not independent of Mr. Bouji within the meaning of NI 52-110. Counsel for Ms Bouji has not made any submissions challenging this assertion. Ms Bouji confirmed in a voluntary interview on March 3, 2017 (the “**Examination**”) that she continues to live at home with her father. Moreover, Ms Bouji also stated in the Examination that since completing her undergraduate education in 2010, Ms Bouji has only maintained permanent employment with the Global Applicants and their affiliates. I also note that Ms Bouji indicated that she is the chair of the Global Applicants’ respective boards of directors, the secretary of GGAI and executive vice-president of Global RESP. Counsel for Ms Bouji has also not made any submissions challenging these assertions.

Staff submission that Mr. Bouji is actively involved in the business of the Global Applicants

16. Staff further submits that the risk of undue influence by Mr. Bouji is necessarily proportionate to how involved Mr. Bouji is in the day-to-day business of the Global Applicants.
17. Staff asserts that the Global Applicants appear to be disregarding their own representation that Mr. Bouji would “remain disengaged from registrants and registered activities”.⁷
18. Staff submitted that during the Examination they asked Ms Bouji about Mr. Bouji’s involvement in the business of Global RESP. Staff expected, based on correspondence with the Global Affiliates in November 2015, and Ms Bouji confirmed, that Mr. Bouji was “in

⁵ For purposes of the Order, “independent” has the meaning as set out in section 1.4 and 1.5 of NI 52-110 except the point of reference is Mr. Bouji or any entities controlled by him.

⁶ E-mail from Michael Denyszyn to Kathleen Strachan re “Update,” dated November 4, 2015.

⁷ E-mail from Kathleen Strachan to Michael Denyszyn re “Just Following Up,” dated October 6, 2015.

charge” of recruiting dealing representatives for Global RESP. However, Ms Bouji also admitted that Mr. Bouji was “in charge of sales” at Global RESP.

19. In the Examination, Ms Bouji elaborated on some of the specific management responsibilities currently being performed by Mr. Bouji. She explained that:
 - Mr. Bouji has a role in hiring decisions for sales managers, sales directors and vice-presidents of sales
 - Mr. Bouji has input in terminating sales managers, sales directors and vice-presidents of sales for lack of production
 - Mr. Bouji works with sales managers, sales directors and vice-presidents of sales to set sales targets and meet sales objectives
 - Mr. Bouji addresses failures to meet sales targets on the part of sales managers, sales directors and vice-presidents of sales; Ms Bouji stated that “it would not be unusual” for her father to “talk to them directly and say this is inadequate”
 - Mr. Bouji has participated in board meetings and executive committee meetings
20. Staff also cited the voluntary interview of Maryam Molasalehi, a former branch manager at Global RESP dated December 1, 2016. Ms Molasalehi confirmed and expanded upon Ms Bouji’s comments about Mr. Bouji’s ongoing and active involvement in the business of Global RESP.
21. Staff submitted that sales of scholarship plans, and the fee revenue associated with these sales, comprise all of the profit-generating activities for Global RESP and the overwhelming majority of the profit-generating activities for GGAI. Therefore, Staff submitted that Mr. Bouji has oversight over activities that are central to the business activities of Global RESP directly, and GGAI indirectly.
22. Staff submit that Ms Bouji’s statements in the Examination collectively establish that Mr. Bouji is actively involved in the business of Global RESP, including the management of sales. Therefore, there remains a significant risk of undue influence during the first phase of Mr. Bouji’s sanctions.
23. Staff also submitted, regarding Ms Bouji’s Counsel’s statement in its May 12, 2017 submissions that “Staff was aware of and approved of S. Bouji’s involvement in sales and recruiting as early as November 2015”, demonstrates that the Global Applicants endorse Mr. Bouji’s ongoing exercise of management responsibilities, and do not recognize the tension between his active role and the restrictions placed upon him by the Order.
24. Staff is therefore of the view that the public interest requires an independent UDP to oversee a compliance system sufficient to appropriately monitor and enforce the restrictions on Mr. Bouji.

Submissions on behalf of Ms Bouji

25. Under section 31 of the Act, Ms Bouji is entitled to an opportunity to be heard before a decision is made by the Director (an “OTBH”). Counsel for Ms Bouji made written submissions to me on May 12, 2017, responded in writing to questions from me on June 7, 2017 and, having been provided with Staff’s responses to my questions to Staff, counsel indicated that it had no further submissions.
26. Counsel for Ms Bouji submits that there should be no question that the Order does not require the next UDP for Global RESP or GGAI to be independent. I note that Staff’s prior concession of this point is reflected in paragraph 27 of the Dismissal Order.
27. Counsel submitted that Ms Bouji “is a very skilled and qualified executive who is very well suited to carry out the role of UDP, and the requisite and required role of CEO of Global RESP and GGAI”, and that “there is no basis to conclude that her application is otherwise objectionable.” Counsel indicated that Ms Bouji’s application has the support of Mr. Prestwich and the independent directors of both Global Applicants. The independent directors have provided letters of recommendation on her behalf.
28. Counsel submits that “Staff has not raised any objection to Ms Bouji herself. Other than Staff’s allegation that the Order requires the UDP to be independent, no objection to the registration application has been raised by Staff.”
29. As noted above, counsel also submitted that Staff was aware of and approved of Mr. Bouji’s involvement in sales and recruiting as early as November 2015. This comment was made in relation to an email from Mr. Denyszn to Global RESP’s in-house counsel sent on November 4, 2015.
30. Counsel’s submissions also make reference to Deputy Director King’s April 13 letter to Ms Bouji, where Ms King stated that “S. Bouji’s ongoing role at Global RESP underscores the need for an independent UDP.” Counsel states that “We agree with the Commission’s comments at paragraph 26 of the [Dismissal Order] that this statement indicates that the ongoing role is not a component of the objection raised by Staff, but rather Staff’s objection is based on the order.”

Findings

On the relevance of the Order to this Decision

31. The Order is important context for Staff’s recommendation that the Application should be refused. In the Settlement Agreement, it is admitted that Mr. Bouji and the Global Applicants, among others, engaged in conduct contrary to the Act and conduct contrary to the public interest. It is particularly relevant that the Order reprimands them and, among other things, permanently suspended Mr. Bouji as UDP and Chief Executive Officer (“CEO”) of the Global Applicants, permanently prohibited him from acting as UDP of any other

registrant (the UDP of a registrant is normally its CEO or equivalent), and prohibited him from acting as an officer of any registrant (which includes the Global Applicants) for a period of nine years.

32. The Order includes no provision governing the appointment of any UDP after the one that replaced Mr. Bouji. So, while the Order does not require the next UDP to be independent, it also does not impose a restriction on the Director's authority to consider independence as a relevant factor in making a decision with regard to an application to be registered as UDP. This also means that "independent" for these purposes can have its ordinary meaning, which includes "not influenced or controlled in any way by other people, events, or things."⁸

On the Decision I must make

33. Since the matter is not pre-determined by the Order, my decision must be founded on the provisions of subsection 27(1) of the Act, which provide that the Director shall register an applicant unless it appears to the Director that the applicant is not suitable for registration or that the registration is otherwise objectionable.
34. In the absence of submissions regarding Ms Bouji's suitability, I will focus on whether it would be otherwise objectionable to accept the Application.

On the independence of Ms Bouji as a relevant consideration

35. Given the Order arises from misconduct during the time when Mr. Bouji was CEO and UDP and seeks to remove him from officer level involvement in the business of the Global Applicants, and that Staff has made unchallenged submissions to the effect that Mr. Bouji continues to be actively involved in the business, I find that Ms Bouji's independence is a relevant consideration in regard to my Decision concerning the Application.
36. No one has suggested Ms Bouji is independent within the definition used for purposes of the Order. In any event, I shall consider her independence in purposive terms: can she be expected to fulfill the important role of UDP of the Global Applicants without undue influence where her father is concerned?

On Mr. Bouji's involvement in the business of the Global Applicants

37. I find the submissions of Staff concerning Mr. Bouji's ongoing involvement in key elements of the business operations of Global RESP, which is not countered by submissions on Ms Bouji's behalf, to be persuasive. Given the integrated operations of the Global Applicants, I think that this involvement of Mr. Bouji in Global RESP is also relevant to the Application as it concerns GGAI. I note that it appears that some of Mr. Bouji's involvement continues to be at a senior decision making level.

⁸ Cambridge Dictionary.

38. The November 4, 2015 email of Mr. Denszyn cited by Ms Bouji's counsel does not state that Staff approved Mr. Bouji's involvement in sales. Mr. Denszyn only stated that Staff did not have any issue with "Mr. Bouji recruiting sales Staff." Mr. Denszyn expressed concern with Mr. Bouji taking a role in training sales Staff unless and until the follow-up review by the consultant appointed under the terms of the Order was completed to the satisfaction of the OSC Manager designated in the Order. He also clarified that "S. Bouji may not provide any services that would be provided by a director or officer of any of the registered firms in the ordinary course." There is a significant difference between involvement in recruiting and involvement in sales in general. Therefore, I find that Staff did not approve of Mr. Bouji's involvement in sales or the extent of his ongoing involvement in the business of Global RESP more generally.
39. I agree with Staff's submission that it appears the Global Applicants do not recognize the tension between Mr. Bouji's ongoing active involvement in their business operations and the restrictions placed upon him by the Order. This makes ethical conduct and the culture of compliance at the Global Applicants a material and ongoing concern.

On the role of the UDP

40. The UDP's role is to "supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm's behalf; [and] promote compliance by the firm, and individuals acting on behalf of the firm, with securities legislation."⁹
41. The Commission has stated that the "role of UDP is critically important" and that "the UDP bears ultimate responsibility for establishing, maintaining and promoting a culture of compliance and ethical behaviour within the firm."¹⁰

On the Application being otherwise objectionable

42. In the case of *Re Sawh*, the Commission held that the following approach should be taken to defining "otherwise objectionable":

In our view, a purposive approach should be taken to the analysis of the concept, that is to say, we should consider whether registration would be "otherwise objectionable" in light of the Commission's mandate, as expressed in section 1.1 of the Act... (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets.¹¹

⁹ National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, section 5.1.

¹⁰ *Re Argosy Securities Inc. and Keybase Financial Group Inc.*, (2016) 39 O.S.C.B. 4040 at para. 171; see also *Re Northern Securities Inc.* (2014) 37 O.S.C.B. 8535 at para. 168, and *Re Sterling Grace & Co. Ltd. and Casale*, (2014) 37 O.S.C.B. 8298 ("**Re Sterling Grace**") at para. 255.

¹¹ *Re Sawh*, (2012) 35 O.S.C.B. 7431 at paragraph 289. See also *Re Sterling Grace*.

43. Prior OSC decisions have also held that registration is “otherwise objectionable” if it is determined, with reference to the purposes of the Act, that it is not in the public interest for the person or company to be registered¹². It has also been held that where “in exercising its public interest jurisdiction, the Commission must act in a protective and preventative manner.”¹³
44. If Ms Bouji is registered as UDP of the Global Applicants, she will be challenged to ensure that her father does not have an improper role in their business. The evidence is that he continues to be actively involved, apparently sometimes operating at a senior decision making level. As I have noted, this gives rise to concerns about ethical behavior and the culture of compliance at the Global Applicants. I think there is also the potential for one or both of the firms to become non-compliant with securities law¹⁴ as a result of Mr. Bouji’s continuing influence. With all due respect to Mr. Prestwich and the independent directors who have expressed confidence in Ms Bouji, I do not think she can reasonably be expected to carry out the duties of UDP without undue influence from Mr. Bouji in the present circumstances.
45. Ms Bouji has no business experience outside the Global Applicants. While she has held the positions of chair of their respective boards of directors and senior officer titles with each of Global Applicants, Mr. Bouji has been allowed to have a level of involvement in their business operations that I find troubling in view of the reasons for the Order and its evident intent that any ongoing involvement that he might have at this time should be limited in scope.
46. I do not believe it would be in the public interest to register Ms Bouji as the UDP of the Global Applicants at this time. I do not believe that to do so would be consistent with investor protection or would foster confidence in the capital markets. Therefore, the proposed registration of Ms Bouji as UDP of the Global Applicants is otherwise objectionable, and it is my decision that the Application should be refused.

“Kevin Fine”
Director, Derivatives Branch
Ontario Securities Commission
June 22, 2017



¹² For example, *see Re Mithras Management Ltd.*, (1990), 13 O.S.C.B. 1600.

¹³ *Re Paul Donald*, (2013) 36 O.S.C.B. 1449.

¹⁴ This would include compliance with the Order (I make no finding as to whether the Global Applicants or Mr. Bouji are in compliance with it at this time, and do not think it necessary that I do so). Subsection 32(1) of the Act states that “Every person and company registered under this Act shall comply at all times with Ontario securities law ...” Subsection 1(1) provides that “ ‘Ontario securities law’ means ... (c) in respect of a person or company, a decision of the Commission or a Director to which the person or company is subject.” Subsection 1(1) also provides that “a ‘decision’ means, in respect of a decision of the Commission ... [an] order ... made under a power ... conferred by this Act ...” The Order cites subsections 127(1), 127(2) and section 127.1 of the Act as the provisions that grant the necessary powers to the Commission.