



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 PAUL AZEFF, KORIN BOBROW,  
MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER AND  
MAN KIN CHENG (a.k.a. FRANCIS CHENG)**

**ORDER**

(Rules 1.6(2), 3, 6 and 9 of the Ontario Securities Commission's *Rules of Procedure* (2012), 35 O.S.C.B.  
10071)

**WHEREAS** on September 22, 2010, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing, pursuant to ss. 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Securities Act**"), accompanied by a Statement of Allegations of Staff of the Commission ("**Staff**") with respect to the respondents Howard Jeffrey Miller ("**Miller**") and Man Kin Cheng ("**Cheng**") for a hearing to commence on October 18, 2010;

**AND WHEREAS** Miller and Cheng were served with the Notice of Hearing and Statement of Allegations dated September 22, 2010 on September 22, 2010;

**AND WHEREAS** at a hearing on October 18, 2010, counsel for Staff, counsel for Cheng, and Miller, appearing on his own behalf, consented to the scheduling of a confidential pre-hearing conference on January 11, 2011 at 3:00 p.m.;

**AND WHEREAS** on November 11, 2010, the Commission issued a Notice of Hearing, pursuant to ss. 127 and 127.1 of the *Securities Act*, accompanied by an Amended Statement of Allegations of Staff which added the respondents Paul Azeff ("**Azeff**"), Korin Bobrow ("**Bobrow**") and Mitchell Finkelstein ("**Finkelstein**"), for a hearing to commence on January 11, 2011;

**AND WHEREAS** Miller, Cheng, Azeff, Bobrow and Finkelstein (together, the "**Respondents**") were served with the Notice of Hearing and Amended Statement of Allegations dated November 11, 2010 on November 11, 2010;

**AND WHEREAS** following a hearing on January 11, 2011, counsel for Staff, counsel for Azeff, Bobrow, Finkelstein and Cheng, and Miller, appearing on his own behalf, attended a confidential pre-hearing conference;

**AND WHEREAS** at the confidential pre-hearing conference on January 11, 2011, all parties made submissions regarding the disclosure made by Staff and it was ordered by the Commission, on the consent of all parties, that Staff and the Respondents would exchange written proposals concerning outstanding disclosure issues and that a motion date would be set for February 22, 2011 regarding disclosure issues, if necessary;

**AND WHEREAS** at the request of the Respondents, and on the consent of Staff, it was agreed that the February 22, 2011 motion date would be adjourned to April 8, 2011;

**AND WHEREAS** a disclosure motion was held on April 8, 2011 and, after submissions by the parties, the Panel issued a Confidentiality Order and Adjournment Order dated April 8, 2011, adjourning the Respondents' disclosure motion and the hearing in this matter to a pre-hearing conference, the date of which was to be agreed to by the parties and provided to the Office of the Secretary;

**AND WHEREAS** on April 18, 2011, Staff filed an Amended Amended Statement of Allegations;

**AND WHEREAS** the Panel issued an amended Confidentiality Order and Adjournment Order dated April 19, 2011 scheduling, on consent of all parties, a confidential pre-hearing conference on June 2, 2011 at 10:00 a.m.;

**AND WHEREAS** all parties consented to an adjournment of the confidential pre-hearing conference from June 2, 2011 at 10:00 a.m. to August 17, 2011 at 10:00 a.m. to allow Staff to provide the Respondents with further disclosure in this matter;

**AND WHEREAS** on July 6, 2011, counsel for Finkelstein served Staff with motion materials seeking a stay of the proceeding against him (the "**Stay Motion**") and Staff indicated that: a) it intended to bring a motion that the Stay Motion is premature and should be heard at the hearing on the merits (the "**Prematurity Motion**"); and b) it intended to bring a motion to seek leave to put before the Panel at the hearing of the Stay Motion certain "without prejudice" communications (the "**Privilege Motion**");

**AND WHEREAS** counsel for Azeff and Bobrow indicated that they intend to bring a motion to compel records from a third party (the "**Third Party**" and the "**Third Party Records Motion**");

**AND WHEREAS** the Respondents advised that they may seek to continue the hearing of the previous disclosure motion, which had been held on April 8, 2011 and had been adjourned on April 8, 2011 and June 1, 2011, or may bring other motions relating to disclosure issues (the "**Disclosure Motion**");

**AND WHEREAS** a pre-hearing conference was held on August 17, 2011 and Staff and the Respondents made submissions regarding the scheduling of the various motions, including the Stay Motion, the Prematurity Motion, the Privilege Motion, the Third Party Records Motion and the Disclosure Motion;

**AND WHEREAS** on August 30, 2011, the Commission ordered that the Privilege Motion be heard on September 26, 2011; the Prematurity Motion and the Stay Motion be heard together commencing on November 9, 2011; the Third Party Records Motion be scheduled to be heard on a date after the Prematurity Motion and the Stay Motion have been heard and decided; the Disclosure Motion be adjourned to a date that will be fixed after the four motions have been heard and decided; and dates for the hearing on the merits of the matter be set after the five motions have been heard and decided (the “**Scheduling Order**”);

**AND WHEREAS** the Privilege Motion, the Prematurity Motion and the Stay Motion have been heard and decided in accordance with the Scheduling Order;

**AND WHEREAS** Staff requested a pre-hearing conference to request, among other things, that the Scheduling Order be amended to schedule the Third Party Records Motion, the Disclosure Motion and the hearing on the merits;

**AND WHEREAS** a pre-hearing conference was held on October 2, 2012 at which time Staff and counsel for the Respondents attended and made submissions;

**AND WHEREAS** on October 2, 2012, the Commission ordered that the request for a summons to compel the production of certain records of a third party and any motion to quash such summons proceed in accordance with Rule 4.7 of the Commission’s *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the “**Rules of Procedure**”), and that a pre-hearing conference be held on January 16, 2013 at which time the Commission would consider scheduling the Disclosure Motion and the hearing on the merits;

**AND WHEREAS** a pre-hearing conference was held on January 16, 2013, and Staff and the Respondents made submissions regarding the scheduling of the Third Party Records Motion, the Disclosure Motion and the hearing on the merits;

**AND WHEREAS** on January 16, 2013, the Commission ordered that: 1) the Third Party Records Motion to review the issuance of a summons shall be heard on April 8, 2013 at 10:00 a.m.; 2) the Disclosure Motion shall be heard on July 17, 2013 at 10:00 a.m.; and 3) the hearing on the merits shall commence on May 5, 2014, and continue up to and including June 20, 2014, save and except for Monday, May 19 (Victoria Day), and the alternate Tuesdays each month when meetings of the Commission are scheduled, the dates of which are unknown at this time;

**AND WHEREAS** on February 28, 2013, counsel for Bobrow, on notice to counsel for Azeff and Staff, requested an adjournment of the Third Party Records Motion, and Staff did not oppose the adjournment request, provided that the dates for the Disclosure Motion and the hearing on the merits were preserved;

**AND WHEREAS** on April 4, 2013, the Commission ordered that the date of April 8, 2013 for the hearing of the Third Party Records Motion be vacated and that the Third Party Records Motion be adjourned to July 9, 2013 at 10:00 a.m.;

**AND WHEREAS** on May 6, 2013, at the request of Bobrow and Azeff, the Commission issued a summons for documents from the Third Party (the “**Third Party Summons**”);

**AND WHEREAS** on June 28, 2013, the Third Party filed its motion record for the Third Party Records Motion seeking an order to quash part of the Third Party Summons;

**AND WHEREAS** the Third Party indicated that it asserted solicitor-client privilege over all documents protected by its privilege;

**AND WHEREAS** the Third Party Records Motion was scheduled to be argued on July 9, 2013;

**AND WHEREAS** on July 9, 2013, Staff, counsel for the Third Party and counsel for Bobrow, who also appeared as agent for counsel for Azeff, attended before the Commission and advised that the Third Party Records Motion had been settled on consent of Azeff, Bobrow and the Third Party on the terms of a draft order to be filed with the Commission;

**AND WHEREAS** on July 9, 2013, counsel for Bobrow, who also appeared as agent for counsel for Azeff, requested that the date for the Disclosure Motion, scheduled for July 17, 2013, be vacated and that the time set aside on July 17, 2013 be scheduled for the hearing of a motion to adjourn the hearing on the merits (the “**Adjournment Motion**”) and a pre-hearing conference;

**AND WHEREAS** on July 11, 2013, the Commission ordered that: 1) the hearing of the Disclosure Motion, which was scheduled for July 17, 2013, be vacated; 2) the hearing of the Adjournment Motion be held on July 17, 2013 at 9:30 a.m.; and 3) immediately after the hearing of the Adjournment Motion on July 17, 2013, a confidential pre-hearing conference be held on July 17, 2013;

**AND WHEREAS** on July 16, 2013, the Commission made an order in respect of the Third Party Records Motion (the “**Third Party Records Order**”), which ordered, amongst other things, that the Third Party shall make best efforts to produce, on a rolling productions basis, the documents subject to the Third Party Records Order (the “**Third Party Documents**”) to Bobrow before October 31, 2013, and in any event, no later than December 31, 2013;

**AND WHEREAS** on July 17, 2013, Staff and counsel for Bobrow, who also appeared as agent for counsel for Azeff, and counsel for Miller, Cheng and Finkelstein attended before the Commission and made submissions regarding the Adjournment Motion brought by counsel for Bobrow;

**AND WHEREAS** counsel for Bobrow submitted that he is counsel for a respondent in a criminal matter in another province (the “**Criminal Matter**”), in which target trial dates were set following a case management conference on May 21, 2013, and that the target trial dates in the criminal matter conflict with the scheduled dates for the hearing on the merits in this matter;

**AND WHEREAS** counsel for Bobrow advised the Commission that the target trial dates are expected to be affirmed at the next appearance in connection with the Criminal Matter on July 29, 2013;

**AND WHEREAS** the Commission has considered the relevant factors listed in Rule 9.2 of the *Rules of Procedure* and has considered the submissions of the parties, taking particular note of the following factors:

1. all parties, including the Respondents Azeff, Finkelstein, Cheng and Miller, consent to the adjournment, save and except Staff;
2. no previous adjournment requests have been made by any Respondent in this matter;
3. the delay that will result from granting the Adjournment Motion is relatively short;
4. the Adjournment Motion was brought 9.5 months before the scheduled start date for the hearing on the merits;
5. given that counsel for Bobrow was retained in November, 2010 at the outset of these proceedings, retaining new counsel for a hearing on the merits in this matter in May and June, 2014 would impose significant cost on and prejudice to Bobrow;
6. the requested adjournment would not impose any cost on the Commission or on any of the parties; and
7. Staff has not demonstrated any specific prejudice if the Adjournment Motion is granted;

**AND WHEREAS** the Respondents were made aware of the Commission’s view that a further request for adjournment would be subject to strict scrutiny and the Commission likely would be reluctant to grant another adjournment of the hearing on the merits;

**AND WHEREAS** on July 17, 2013, Staff and counsel for Bobrow, who also appeared as agent for counsel for Azeff and Finkelstein, and counsel for Miller and Cheng attended a confidential pre-hearing conference immediately following the hearing of the Adjournment Motion;

**AND WHEREAS** the Commission encouraged the parties to ensure that any further motions would be brought before the Commission in a timely fashion to avoid any further delay of the hearing on the merits;

**AND WHEREAS** the parties agreed that a disclosure motion will be held on November 20, 2013 at 10:00 a.m. and a confidential pre-hearing conference will be held on January 16, 2014 at 10:00 a.m.;

**AND WHEREAS** Staff and counsel for Bobrow agreed that counsel for Bobrow will use his best efforts to provide to Staff any relevant Third Party Documents that Bobrow and Azeff intend to rely upon as evidence at the hearing on the merits before June 1, 2014, and in any event, no later than July 1, 2014;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this order;

**IT IS ORDERED THAT:**

1. the Adjournment Motion brought by Bobrow is granted;
2. the dates scheduled for the hearing on the merits, commencing on May 5, 2014 and continuing up to and including June 20, 2014, save and except for certain dates, shall be vacated;
3. the hearing on the merits shall commence on September 15, 2014, and continue up to and including November 7, 2014, save and except for September 25 and 26, 2014 (Rosh Hashanah), October 13, 2014 (Thanksgiving) and the dates on which meetings of the Commission are scheduled, being September 23, October 7, 21 and November 4, 2014;
4. a disclosure motion shall be held on November 20, 2013 at 10:00 a.m.;
5. a confidential pre-hearing conference shall be held on January 16, 2014 at 10:00 a.m.; and
6. counsel for Bobrow will use his best efforts to provide to Staff any relevant Third Party Documents that Bobrow and Azeff intend to rely upon as evidence at the hearing on the merits before June 1, 2014, and in any event, shall provide such Third Party Documents to Staff no later than July 1, 2014.

**DATED** at Toronto this 29<sup>th</sup> day of July, 2013.

*“Edward P. Kerwin”*

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Edward P. Kerwin