



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
PORTFOLIO CAPITAL INC., DAVID ROGERSON
and AMY HANNA-ROGERSON**

ORDER

WHEREAS on March 25, 2013, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the "**Act**") in connection with a Statement of Allegations filed by Staff of the Commission ("**Staff**") on March 25, 2013 with respect to Portfolio Capital Inc. ("**Portfolio Capital**"), David Rogerson ("**Rogerson**") and Amy Hanna-Rogerson ("**Hanna-Rogerson**") (collectively, the "**Respondents**");

AND WHEREAS the Notice of Hearing set a hearing in this matter for April 17, 2013;

AND WHEREAS on April 17, 2013, Staff and counsel to Rogerson appeared before the Commission and no one appeared on behalf of Hanna-Rogerson or Portfolio Capital;

AND WHEREAS on April 17, 2013, the Commission ordered that a pre-hearing conference take place on May 27, 2013 at 9:00 a.m.;

AND WHEREAS on May 27, 2013, Staff and counsel to the Respondents appeared and made submissions before the Commission;

AND WHEREAS on May 27, 2013, the Commission ordered that a pre-hearing conference take place on June 24, 2013 at 9:00 a.m.;

AND WHEREAS on May 27, 2013, the parties agreed that at the pre-hearing conference scheduled for June 24, 2013 at 9:00 a.m., the parties would be prepared to set the following dates:

- (a) a date in September 2013 for a pre-hearing conference, by which time the Respondents and Staff will have provided witness lists and disclosure to the other parties;
- (b) a date in October 2013 for a further pre-hearing conference to prepare for the hearing on the merits; and
- (c) dates in November 2013 for the hearing on the merits;

AND WHEREAS on June 4, 2013, Staff filed an Amended Statement of Allegations with respect to the Respondents;

AND WHEREAS on June 24, 2013, Staff appeared and made submissions and counsel to Rogerson appeared and made submissions on behalf of his client and on behalf of counsel to Hanna-Rogerson and Portfolio Capital;

AND WHEREAS on June 24, 2013, the Commission ordered that:

- (a) Staff shall provide any additional disclosure to the Respondents by July 12, 2013;
- (b) Staff shall provide its witness list and hearing briefs to the Respondents by September 12, 2013;
- (c) the Respondents shall provide their witness lists and hearing briefs to Staff by September 25, 2013;
- (d) the hearing be adjourned to a further pre-hearing conference to be held on September 27, 2013 at 10:00 a.m. to prepare for the hearing on the merits; and
- (e) the hearing on the merits in this matter shall commence on November 4, 2013 at 10:00 a.m. and shall continue on November 6, 7, 8 and 11, 2013;

AND WHEREAS on June 26, 2013, Staff filed an Amended Amended Statement of Allegations with respect to the Respondents;

AND WHEREAS on September 27, 2013, Staff appeared and made submissions and counsel to Rogerson and Portfolio Capital appeared and made submissions on behalf of his clients and on behalf of counsel to Hanna-Rogerson;

AND WHEREAS on September 27, 2013, the Commission ordered that the hearing be adjourned to a further pre-hearing conference to be held on October 9, 2013 at 2:00 p.m.;

AND WHEREAS on October 9, 2013, Staff and counsel to the Respondents appeared and made submissions before the Commission;

AND WHEREAS on October 9, 2013, the Commission ordered that:

- (a) the hearing dates of November 4, 6, 7 and 8, 2013 be vacated;
- (b) the hearing on the merits in this matter shall commence on November 11, 2013 at 10:00 a.m. and shall continue on November 13, 14 and 15, 2013;
- (c) the hearing be adjourned to a further pre-hearing conference to be held on October 17, 2013 at 2:00 p.m.;
- (d) the motion brought by counsel to Rogerson and Portfolio Capital to adjourn the commencement date of November 11, 2013 for the hearing on the merits (the "**Motion**") would be heard immediately following the pre-hearing conference scheduled for October 17, 2013; and
- (e) the Respondents shall be granted one last indulgence and shall provide their hearing briefs, will-say statements and witness list to Staff by October 29, 2013;

AND WHEREAS counsel to Rogerson and Portfolio Capital filed a Notice of Motion, dated October 15, 2013, and Staff filed the Affidavit of Stephanie Collins, sworn October 16, 2013, in relation to the Motion;

AND WHEREAS on October 17, 2013, Staff and counsel to the Respondents appeared and made submissions for a pre-hearing conference;

AND WHEREAS on October 17, 2013, following the pre-hearing conference, the Commission held a hearing with respect to the Motion, which Staff opposed and counsel to Hanna-Rogerson supported;

AND WHEREAS the Commission considered the factors to grant an adjournment set out in Rule 9.2 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071, along with the motion materials and submissions of the parties, and ordered that:

- (a) the hearing on the merits scheduled to commence on November 11, 2013 will commence on February 10, 2014 and shall continue on February 12, 13, 14 and 18, 2014; and
- (b) the hearing be adjourned to a further pre-hearing conference to be held on December 18, 2013 at 10:00 a.m.;

AND WHEREAS the Respondents failed to provide their hearing briefs, will-say statements and witness list to Staff by October 29, 2013, as ordered by the Commission on October 9, 2013;

AND WHEREAS on November 29, 2013, Staff and counsel to Rogerson, who also appeared as a representative for Hanna-Rogerson and Portfolio Capital, appeared and made submissions before the Commission at a confidential pre-hearing conference;

AND WHEREAS the Panel informed the parties that any documents that the Respondents wish to rely on at the hearing on the merits must be submitted by January 3, 2014, and that the Respondents would be precluded from submitting any further documents for the hearing on the merits after that date;

AND WHEREAS on November 29, 2013, the Commission ordered that:

- (a) the Respondents shall provide their hearing briefs, will-say statements and witness list to Staff by 4:30 p.m. on January 3, 2014;

- (b) the pre-hearing conference scheduled for December 18, 2013 at 10:00 a.m. be vacated; and
- (c) the hearing be adjourned to a further pre-hearing conference to be held on January 10, 2014 at 10:00 a.m.;

AND WHEREAS on January 3, 2014, the Respondents served their hearing brief on Staff (the “**Respondents’ Hearing Brief**”);

AND WHEREAS on January 10, 2014, Staff and counsel to the Respondents appeared and made submissions before the Commission;

AND WHEREAS Staff and counsel to the Respondents consented to submit an agreed statement of facts by January 17, 2014, and the parties agreed that Staff would provide the Respondents with the particulars of its allegations in relation to subsection 126.1(b) of the Act by January 29, 2014;

AND WHEREAS on January 10, 2014, the Commission ordered that:

- (a) an agreed statement of facts shall be submitted by the parties in this matter by January 17, 2014, and, in the event that an agreed statement of facts was not reached, the parties will communicate with the Registrar of the Office of the Secretary to schedule a further appearance in this matter; and
- (b) Staff shall provide to the Respondents the particulars of its allegations in relation to subsection 126.1(b) of the Act by January 29, 2014;

AND WHEREAS Staff and the Respondents entered into an agreed statement of facts;

AND WHEREAS on January 28, 2014, the Commission received notice that the Respondents discharged their counsel and that the Respondents elected to act in person in respect of this matter;

AND WHEREAS on January 29, 2014, Staff served and filed the particulars of its allegations of securities fraud made against the Respondents;

AND WHEREAS the hearing on the merits commenced on February 10, 2014 and continued on February 12, 13, and 14, 2014;

AND WHEREAS on February 14, 2014, the Commission ordered that:

- (a) the hearing date of February 18, 2014 be vacated;
- (b) Staff shall serve and file its written closing submissions by March 14, 2014;
- (c) the Respondents shall serve and file any written closing submissions by March 28, 2014; and
- (d) if the Respondents serve and file written closing submissions, the hearing on the merits shall continue for the purpose of hearing oral closing submissions on a date and time to be set by the Office of the Secretary;

AND WHEREAS on March 13, 2014, Staff served and filed its written closing submissions;

AND WHEREAS on March 28, 2014, the Respondents served and filed their written closing submissions and attached several documents that they wished to rely on at the hearing on the merits (the “**March 2014 Documents**”);

AND WHEREAS on April 14, 2014, Rogerson requested that he be permitted to introduce documentary and oral evidence before the Panel at the hearing on the merits (the “**Evidence Motion**”);

AND WHEREAS on April 22, 2014, the Commission informed the parties that a hearing would be held on May 1, 2014 at 10:00 a.m. for the sole purpose of hearing the Respondents’ Evidence Motion and any other matters related to the completion of the hearing on the merits;

AND WHEREAS on April 29, 2014, Staff served and filed a Memorandum of Fact and Law, a Brief of Authorities and the Affidavit of Julia Ho, sworn April 23, 2014;

AND WHEREAS on May 1, 2014, Rogerson served and filed responding materials, including copies of certain documents that he wished to introduce, which included all or

substantially all of the documents included in the Respondents' Hearing Brief, several of the March 2014 Documents and certain additional documents (the "**Additional Documents**");

AND WHEREAS on May 1, 2014, Staff attended in person, Rogerson and Hanna-Rogerson attended by telephone conference and the parties made submissions with respect to the Evidence Motion;

AND WHEREAS on May 14, 2014, the Commission ordered that, in order to make a determination on the Evidence Motion, a further appearance would be held at 10:00 a.m. on May 29, 2014 to discuss the conduct of the hearing, including the use, if any, of videoconferencing;

AND WHEREAS on May 29, 2014, Staff attended in person, and Rogerson and Hanna-Rogerson attended by telephone conference;

AND WHEREAS the Respondents identified three witnesses located in British Columbia, including Rogerson and Hanna-Rogerson, whose evidence they wish to introduce at the hearing on the merits (the "**British Columbia Witnesses**");

AND WHEREAS the Respondents identified a fourth potential witness located in Alberta (the "**Alberta Witness**"), whose availability to participate in the hearing on the merits was unknown as of the May 29, 2014 hearing;

AND WHEREAS the Commission directed the Respondents to notify the Office of the Secretary of the Alberta Witness's availability to participate in the hearing on the merits by June 5, 2014 so that testimony by video link from Alberta could be facilitated;

AND WHEREAS the Respondents did not provide confirmation that the Alberta Witness was available to participate in the hearing on the merits;

AND WHEREAS on June, 6, 2014, the Commission ordered that the hearing on the merits would continue on June 24 and 25, 2014, beginning at 1:00 p.m. both days, on which dates the Respondents would be permitted to introduce evidence, as follows;

- (a) the three British Columbia Witnesses would be permitted to testify by video link from Vancouver, British Columbia, as arranged by the Office of the Secretary;

- (b) the Alberta Witness would be permitted to testify by video link from Vancouver, British Columbia, as arranged by the Office of the Secretary, or to testify at the offices of the Commission in Toronto; and
- (c) the Respondents may introduce documentary evidence from the March 2014 Documents and the Additional Documents;

AND WHEREAS the hearing on the merits continued on June 24 and 25, 2014, with Staff attending in person, Rogerson and Hanna-Rogerson attending by video conference and the British Columbia Witnesses testifying by video conference;

AND WHEREAS the Alberta Witness did not appear before the Commission or testify at the hearing on the merits;

AND WHEREAS on June 25, 2014, the Commission ordered that:

- (a) Staff shall serve and file its supplementary or restated written closing submissions by 5:00 p.m. E.D.T. on July 24, 2014;
- (b) the Respondents shall serve and file any supplementary or restated written closing submissions by 5:00 p.m. E.D.T. on August 7, 2014; and
- (c) Staff shall serve and file any reply written closing submissions, if necessary, by 5:00 p.m. E.D.T. on August 28, 2014;

AND WHEREAS on July 24, 2014, Staff filed its Merits Hearing Fresh Closing Submissions and a Book of Authorities;

AND WHEREAS on August 6, 2014, Rogerson requested an extension of time to submit his supplementary or restated written closing submissions to August 18, 2014, and Staff did not object to the request, provided that any reply written closing submissions by Staff be correspondingly extended to September 5, 2014;

AND WHEREAS on August 7, 2014, the Commission ordered that the Respondents shall serve and file any supplementary or restated written closing submissions by 5:00 p.m. E.D.T. on

August 18, 2014, and Staff shall serve and file any reply written closing submissions, if necessary, by 5:00 p.m. E.D.T. on September 5, 2014;

AND WHEREAS on August 14, 2014, Rogerson requested a further extension of time to submit his supplementary or restated written closing submissions to August 25, 2014, and Staff did not object to the request, provided that any reply written closing submissions by Staff be correspondingly extended;

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

IT IS HEREBY ORDERED that the Respondents shall serve and file any supplementary or restated written closing submissions by 5:00 p.m. E.D.T. on August 25, 2014, and Staff shall serve and file any reply written closing submissions, if necessary, by 5:00 p.m. E.D.T. on September 12, 2014.

DATED at Toronto this 15th day of August, 2014.

“Christopher Portner”

Christopher Portner