



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 AND KORIN BOBROW

**REASONS AND DECISION
ON A DISCLOSURE APPLICATION**

Hearing: December 3, 2015

Decision: December 8, 2015

Panel: Alan J. Lenczner - Chair of the Panel
AnneMarie Ryan - Commissioner

Appearances: Bruce O'Toole - For Paul Azeff and Korin Bobrow

Anna Perschy - For Staff of the Commission
Jennifer Lynch

REASONS AND DECISION ON A DISCLOSURE APPLICATION

I. NATURE OF THE APPLICATION

- [1] Paul Azeff and Korin Bobrow (the "**Applicants**") move the Ontario Securities Commission (the "**Commission**") for an Order requiring Enforcement Staff of the Commission ("**Staff**") to disclose, among other things, information and materials obtained by Staff through investigative powers of compulsion subsequent to a decision of the Commission that had imposed sanctions on the Applicants. Specifically, the Applicants sought disclosure of:
- (a) orders issued pursuant to section 11 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**");
 - (b) demands made pursuant to section 19 of the Act;
 - (c) correspondence regarding (a) and (b) above; and
 - (d) all correspondence between Staff, the Investment Industry Regulatory Authority of Canada and the Autorité des marchés financiers.
- [2] The Applicants relied on Rules 3 and 4 of the *Rules of Procedure* (2014) 37 O.S.C.B. 4168 (the "**OSC Rules**") and section 8 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") in support of their application and as authority for the Commission to exercise its statutory power. The Applicants submitted that the full disclosure obligations of *R. v. Stinchcombe*, [1991] 3 SCR 326 ("**Stinchcombe**") apply to Staff, in this instance, because the evidence was collected as part of a continuation of a proceeding commenced by the Commission.
- [3] Staff opposed the disclosure request on the basis that the Commission had no jurisdiction to make the order request under the OSC Rules or the SPPA and took the position that there is no proceeding currently before the Commission that would trigger the *Stinchcombe* disclosure obligations.

II. BACKGROUND

- [4] On March 24, 2015, the Commission found that the Applicants breached Ontario securities law and acted contrary to the public interest (*Re Azeff et al.* (2015), 38 O.S.C.B. 2983; the "**Merits Decision**").
- [5] On August 24, 2015, the Commission ordered sanctions and costs against the applicants (*Re Azeff et al.* (2015), 38 O.S.C.B. 7382; the "**Sanctions Order**").
- [6] The Applicants have appealed the Merits Decision and the Sanctions Order to the Divisional Court. The Applicants also moved a single judge of the Divisional Court to stay the Sanctions Order pending their appeal. On October 21, 2015, Justice Kruzick issued an endorsement, dismissing the Applicants' motion for a stay (*Azeff and Bobrow v. Ontario Securities Commission*, Court File No. 480/15).
- [7] The Applicants bring this application in the context of an appeal from Justice Kruzick's Order to a full panel of the Divisional Court and have indicated that they require the information and materials sought to complete their record.
- [8] Since the completion of the application before the Commission on Thursday, December 3, 2015, the Applicants have indicated, by letter dated December 4, 2015, that they have filed a Notice of Abandonment of the motion for leave to

appeal the dismissal of the stay motion, but that they intend to proceed with the motion to set aside or vary the decision of Justice Kruzick.

III. JURISDICTION

- [9] We are of the opinion that the Commission has no statutory authority to make the order sought by the Applicants.
- [10] The Applicants rely upon Rules 3 and 4 of the OSC Rules, which they acknowledge are procedural. They submit that the OSC Rules apply nonetheless because this is a continuation of a proceeding commenced by the Commission.
- [11] Rule 1.2 indicates that the OSC Rules “apply to all proceedings before a Panel where the Commission is authorized under the Act or the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended, or otherwise by law to hold a hearing.”
- [12] Section 3 of the SPPA provides that it:
applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision.
- [13] The Applicants also refer to and rely on a decision of the Commission in *Re Crown Hill Capital Corp.* (2014) 37 O.S.C.B. 8294 (“**Crown Hill**”), in support of their submission that their application is a continuation of a proceeding commenced by the Commission.
- [14] We find that this is not a continuation of a Commission proceeding. This application is related to a motion brought before the Divisional Court. In our view, the Commission does not have jurisdiction to make disclosure orders that require Staff to adhere to *Stinchcombe* obligations after a sanctions order has been issued pursuant to section 127 of the Act.
- [15] The *Crown Hill* decision does not assist the Applicants. In that case, a section 11 Order was made after the merits hearing was concluded and determined, but before the sanctions hearing had begun. There, the purpose of the section 11 Order was to allow Staff to investigate the conduct of the Respondents in light of allegations made that the Respondents were dissipating assets in advance of, and in anticipation of, the sanctions hearing. In *Crown Hill*, the proceeding was ongoing and the Commission had authority to exercise its jurisdiction. In this matter, the proceeding before the Commission has been completed and the Commission has no further jurisdiction, pursuant to section 127 of the Act, to order what is being sought.

IV. CONCLUSION

- [16] The application is dismissed.

Dated at Toronto this 8th day of December, 2015.

“Alan J. Lenczner”

Alan J. Lenczner

“AnneMarie Ryan”

AnneMarie Ryan