

May 16, 2016

TO: Brenda Leong - Chair
British Columbia Securities Commission
PO Box 10142 (Pacific Centre)
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2

FROM: Rod Wharram / West Karma Ltd., Deercrest Construction Fund Inc., Falls Capital Corp.



(the "Respondents in BCSC Action")

SENT VIA EMAIL TO: bleong@bcsc.bc.ca

RE: DID THE PANEL MAKE AN ERROR DURING THE HEARING?

Dear Ms. Leong,

1. As you are aware, from September 2010 through December 2015, the Respondents had a matter present itself with the *British Columbia Securities Commission* ("BCSC"). On November 25, 2015, a Panel (consisting of Nigel Cave, Don Rowlatt, Judith Downes, and George C. Glover) issued their Decision (2015 BCSECCOM 422). The Executive Director was represented by *C. Paige Leggat* ("Leggat") and then *Olubode Fagbamiye* ("Fagbamiye") after Leggat resigned in the middle of the matter.
2. The main hearing started April 7, 2014 and concluded on April 16, 2014. The hearing consisted of Staff calling 9 witnesses (the lead investigator – Elizabeth Chan, six former investors, the owner of 360 Fabrications, and the owner of Natures Fare).
3. One of the former investors called as a witness was Jonathan Lo (an investor in Falls Capital Corp.). Lo took the stand on April 8, 2014 and testified under oath as to the facts as he knew them.
4. Staff for the Executive Director committed a heinous error on January 31, 2013 when they provided their Will Say Statements (see attached) to the Respondents. As with all hearing and tribunals, the Respondents were to rely upon these Will Say Statements during the hearing. Collette Colter (Staff's Assistant who committed numerous other mistakes during the duration of the matter) mistakenly put the wrong name of a person (who introduced Lo to the investment) in the Will Say Statement during its preparation.

5. During the cross-examination, the Respondent Wharram was finally able to discover that the name of the person in the Will Say Statement, in fact, did not exist. The transcript for the day is as follows:

Q How did you say you first heard about the investment in Falls Capital Corp.?

A The first time, the first time I heard about it came from my friend Elaine. Elaine – Elaine works for a company called Portfolio Strategies, and she told me about hey, you know what, it's an investment that's a great investment.

...

Q Okay. Who did you say Elaine works for, what company does Elaine work for?

A I work for -- I work for -- back in those '07.

Q No, sorry. Elaine, you mentioned Elaine Gau?

A Portfolio Strategies.

Q Have you ever heard of a Susan Wong, or sorry, yes, Susan Wong at Portfolio?

A No.

Q Okay.

A Never.

MR. WHARRAM: Can I let the panel know that for many weeks now I've been preparing a defence with the understanding that part of this defence was going to be with respect to a will say statement I was sent to rely on. I want the record to show that my preparation for this witness has been compromised by a mistake made in a document that I was told to rely, and that's the will say statement provided to me. Okay.

THE CHAIR: Okay. Before we leave that point can I just have a response from counsel.

MR. FAGBAMIYE: The will say statement is normally prepared and sent ahead, but it doesn't have -- the witnesses do not go through the will say statements.

THE CHAIR: No, I understand that, but I guess I'd just like to understand if there's been a discussion and what your understanding of the missing information or the discrepancy in the information. I appreciate your point that witnesses are not bound to will say statements, but I'd just like to understand, if you have an understanding, of what the issue is and what the response is. If you don't we can certainly -- I can certainly get a response from you later on on this.

MR. FAGBAMIYE: Yeah, there is a reference to a Susan Wong of Portfolio Strategies in the will say statement, but the evidence of the witness is that it's Elaine Gau that dealt with his portfolio, I think his evidence should take precedence.

THE CHAIR: So, Mr. Wharram, I've heard you, and as I mentioned before there's going to come a time and place in which you can make submissions, and this would be one of those in terms of, you know, what value and what relevance, I'm sorry, what weight we should put on evidence.

6. And with that, the hearing continued and the Panel Chair allowed me to continue with the witness. At no time did Panel Chair Cave offer me a recess or an opportunity to regroup to better conduct the cross examination of Mr. Lo.
7. This was a significant error – this was not a matter of a small, insignificant error that had zero consequences. A Will-Say Statement at all levels of court (and tribunals) are documents the opposing parties are to rely on. They are to be prepared with due care and need to be cross-checked by the parties responsible for sending them to the other party. Staff (considering the large sums of money they are paid for doing their jobs) have a responsibility to ensure their work is mistake free. This did not happen in this instance, and like I said, Ms. Colter made several blunders during my matter, including writing the wrong date on the Executive Director's original Notice of Hearing.
8. It was not until a few days after the hearing that Wharram understood the significance of the blunder Staff made. The testimony of Mr. Lo was important and part of the overall cross-examination of all 6 of the former investors. The Panel did not get to see the proper cross-examination of the witness because Wharram was not able to prepare a proper defence.
9. Again, this was not a simple typo made by Ms. Colter – this was simply lazy, sloppy legal work that delayed Wharram from properly preparing for this witness. An Elain Gou does not become a Susan Wong in a simple typing error.

A QUESTION FOR THE CHAIR OF THE BCSC

10. In that Wharram was self-represented and has no formal legal training and considering the significance of the blunder by Staff, should Panel Chair Nigel Cave offered Wharram a brief adjournment to allow him to prepare properly for this witness rather than allowing him to continue? Should Wharram's defence have been compromised by Staff's failure to do their jobs accurately and free of errors?

Ms. Leong, again I ask you to answer these very simple questions. If you could please write me a response within the next 10 business days, it would very much be appreciated.

Respectfully,

A handwritten signature in black ink, appearing to read 'Rodney J. Wharram', written in a cursive style.

Rodney J. Wharram