

IN THE MATTER OF THE SECURITIES ACT,
R.S.N.S. 1989, CHAPTER 418, AS AMENDED (“ACT”)

-AND-

IN THE MATTER OF AN INVESTIGATION IN RESPECT OF
KNOWLEDGE HOUSE INC.

-AND-

IN THE MATTER OF THE MOTIONS OF DANIEL POTTER,
KNOWLEDGE HOUSE INC., CALVIN WADDEN AND KENNETH MACLEOD

DECISION

During the examination for discovery of a staff witness conducted as a means of disclosure, the respondents posed certain questions to the witness and Staff’s counsel objected to them. The examination apparently stalled as the witness, on the advice of counsel, refused to answer the question (s). The parties sought my assistance and a ruling on the questions and objection.

“Upon hearing the parties they agreed that the question and objection were as follows:

Do you have any knowledge/information as to why the decision was made to not bring enforcement proceedings against particular subjects of the investigation with respect to whom you had recommended there was sufficient evidence to support a violation?

Objection: The witness cannot answer this questions because the answer may violate Nova Scotia securities law?”

I have ruled as follows:

- (a) The objection cannot be upheld as it does not disclose what securities law will be violated, and
- (a) The question was objectionable on grounds other than that stated by staff counsel in that it calls for irrelevant information and hearsay. The fundamental basis of this objection was not disclosed, viz. what securities law it may be violating.

The respondents made it clear, however, that they intend to continue to ask for the information sought and staff has stated this objection will be re-stated and the witness advised not to answer.

My oral decision was as follows:

“I am going to give you a very brief decision and I would ask it be transcribed and given to me so I can edit it and clarify any points that I feel should be clarified.

In the meantime, I want to give you what I have decided. But before I do, I want to repeat that my decision, with respect to the question asked, stands but it is restricted to that question and that question only. I do want to go on and say, however, Mr. Donovan, as my counsel, has met with the parties and has reported to me that the situation has developed as follows.

- (1) Consideration has been given by the parties to the appointment of a master who will sit during these discoveries and make rulings as to relevancy. This possibility, however, is ultimately impractical as staff has indicated that objections will still be made on the basis of possible violation of unidentified security laws of Nova Scotia.
- (2) Staff has taken the position that it will only reveal to me the securities laws which may be violated by disclosure by meeting with me in-camera. The respondents have objected to such a procedure. An objection I accept, as I believe an in-camera meeting excluding the respondents would be improper.
- (3) Any disclosure to me of the impugned evidence sought on discovery has the potential of tainting my impartiality or objectivity and I, therefore, decline to enter into the procedures sought by staff.
- (4) I would find it impossible to uphold staff's future objections on the basis of undisclosed laws, if such objections are made, as has been indicated by staff, will occur. Similarly, the respondents have made it clear that they intend to continue to ask questions which may attract such objections.
- (5) I, therefore, conclude that this discovery should proceed but I request the parties to avoid the proposed areas of discovery which will lead to an impasse until they have completed the non-contentious aspects of their discovery. Let the discovery go as far as you possibly can before you get to an impasse.

- (6) If and when an impasse occurs, I direct that an application be made to the Supreme Court of Nova Scotia by staff to obtain a ruling on the validity of staff's objections and the admissibility of the question. I will authorize and direct my counsel to assist in the framing and presentation of the matter to the Court so as to give me directions as to the procedure and rulings to be made.

I emphasize, however, that Mr. Donovan should not become tainted by the disclosure of contentious evidence.”

For reasons I have previously set forth in other decisions in this matter I have concluded that it would be unwise to embark on a lengthy, expensive hearing when a question as basic as the right to make full answer and defence is outstanding and discoveries are incomplete. I have concluded the admissibility of this question and the validity of this objection must be resolved.

DATED at Halifax, Nova Scotia this 20th day of April, 2010.



Commissioner David Gruchy