

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

- AND -

IN THE MATTER OF KENNETH G. MACLEOD
AND CALVIN W. WADDEN

- AND -

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

- AND -

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

DECISION dated December 9, 2011

BACKGROUND

At a pre-hearing conference held November 17, 2011, Heidi Schedler on behalf of Staff objected to Dan Potter participating in discovery examinations of Scott Peacock, Brian Connell-Tombs and Alexis Meanchoff. The discovery examinations are expected to resume after the Nova Scotia Court of Appeal issues its decision in *Staff of the Nova Scotia Securities Commission v. Daniel F. Potter, Calvin W. Wadden and Kenneth G. MacLeod*, CA No. 351542.

Staff objects to Mr. Potter participating in the discoveries on the basis that its allegations against Mr. Potter and KHI have been withdrawn.

Mr. Potter and Dale Dunlop (on behalf of his clients) disagree with Staff’s position. They maintain the discoveries are not restricted to Staff’s allegations against the respondents. Rather, the discoveries will properly include topics raised in the respective motions of Mr. Potter and KHI and Mssrs. MacLeod and Wadden.

ANALYSIS

Staff discontinued its allegations against Mr. Potter and KHI by notice of discontinuance dated May 16, 2011, following which Staff requested a hearing to determine whether Mr. Potter and KHI continue to have standing in the Commission proceeding.

Commissioner Gruchy denied Staff’s motion and issued an order on August 9, 2011 allowing Mr. Potter to continue to participate in the hearing. The order states:

IT IS HEREBY ORDERED that:

- 1) Staff's motion is denied and Mr. Potter shall continue to have standing in this proceeding.
- 2) Mr. Potter's standing in this proceeding is restricted to the motion of Mr. Potter on behalf of himself and Knowledge House Inc. dated June 30, 2006.

Mr. Potter continues to have standing in the proceeding with respect to his motion.

The scope of the discoveries is described in the order of Commissioner Gruchy dated November 13, 2009. All parties consented to the form of the order. Paragraph 3 of the Order states:

The scope of the discovery examinations to be conducted pursuant to this order is as directed by Commissioner Baxter in his December 11, 2006 decision together with the full scope of discovery regarding all materials provided on July 10, 2009 and July 29, 2009 in relation to the pending motions of Mr. Potter, Knowledge House Inc., Calvin Wadden and Kenneth MacLeod and any issues identified in the Notice of Hearing in this matter.

[Emphasis added]

While it may be correct that Mr. Potter is no longer a party to this proceeding he has requested an opportunity to explore the substance of his motion as was contemplated by decisions of the Nova Scotia Court of Appeal.

I have therefore concluded that Mr. Potter should have the opportunity to examine the witnesses above mentioned in relation to and restricted to his motion of June 30, 2006.


D. W. Gruchy
Commissioner