



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Toronto ON M5H 3S8

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Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF NEST ACQUISITIONS AND MERGERS,
IMG INTERNATIONAL INC., CAROLINE MYRIAM FRAYSSIGNES,
DAVID PAUL PELCOWITZ, MICHAEL SMITH, and
ROBERT PATRICK ZUK**

**DECISION AND ORDER
(Sections 37, 127 and 127.1 of the *Securities Act*)**

WHEREAS on January 18, 2010, the Secretary to the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for a hearing to commence at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Thursday, January 28th, 2010 at 10 a.m., or as soon thereafter as the hearing can be held;

AND WHEREAS on January 18, 2010, Staff of the Commission ("Staff") filed with the Commission a Statement of Allegations in this matter;

AND WHEREAS, following lengthy preliminary matters, the hearing on the merits took place between May 16, 2012 and January 15, 2013;

AND WHEREAS on December 5, 2012, the Commission approved a settlement agreement entered into by Staff and Robert Patrick Zuk;

AND WHEREAS on December 6, 2012, Staff withdrew the allegations against Caroline Myriam Frayssignes;

AND WHEREAS on April 26, 2013, the Commission released its reasons and decision on the merits, making findings against David Paul Pelcowitz ("Pelcowitz") and IMG International Inc. ("IMG") and dismissing the allegations against Michael Smith and Nest Acquisitions and Mergers (*Re Nest et al.* (2013), 36 O.S.C.B. 4628, the "Merits Decision");

AND WHEREAS on April 26, 2013, the Commission ordered that the hearing in respect of sanctions and costs take place on June 27, 2013 at 10 a.m. (the “Sanctions and Costs Hearing”);

AND WHEREAS on or about June 20, 2013, recently retained counsel for David Pelcowitz requested the consent of Staff to a brief adjournment of the Sanctions and Costs Hearing;

AND WHEREAS Staff consented to a brief adjournment of the Sanctions and Costs Hearing;

AND WHEREAS on June 26, 2013, the Commission ordered that the Sanctions and Costs Hearing scheduled for June 27, 2013 at 10 a.m. be adjourned to July 17, 2013 at 9 a.m.;

AND WHEREAS on July 15, 2013, Staff submitted a letter advising that Staff and Pelcowitz agreed to make joint submissions concerning sanctions and costs (the “July 15 Letter”);

AND WHEREAS the July 15 Letter enclosed an Acknowledgement and Irrevocable Direction signed by Pelcowitz, as power of attorney for IMG, that funds being held in IMG’s bank account be paid to the Commission;

AND WHEREAS the Sanctions and Costs Hearing took place on July 17, 2013;

AND WHEREAS on July 17, 2013, counsel for Staff and counsel for Pelcowitz attended and no one appeared for IMG;

AND WHEREAS on July 17, 2013, counsel for Staff and counsel for Pelcowitz made a joint submission on the appropriate sanctions and costs with respect to Pelcowitz;

AND WHEREAS on July 17, 2013, the Commission made a finding that the joint submission on sanctions and costs made by Staff and Pelcowitz was appropriate and proportionate to the findings against Pelcowitz in the Merits Decision;

AND WHEREAS on July 17, 2013, the Commission made a finding that the sanctions sought against IMG were appropriate and proportionate to the findings against IMG in the Merits Decision;

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

IT IS ORDERED:

- (a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Pelcowitz and IMG cease permanently;
- (b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Pelcowitz and IMG is prohibited permanently;
- (c) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Pelcowitz and IMG permanently;
- (d) pursuant to clause 6 of subsection 127(1) of the Act, that Pelcowitz be reprimanded;
- (e) pursuant to clause 8 of subsection 127(1) of the Act, that Pelcowitz be prohibited permanently from becoming or acting as a director or officer of any issuer;
- (f) pursuant to clause 8.2 of subsection 127(1) of the Act, that Pelcowitz be prohibited permanently from becoming or acting as a director or officer of a registrant;
- (g) pursuant to clause 8.4 of subsection 127(1) of the Act, that Pelcowitz be prohibited permanently from becoming or acting as a director or officer of an investment fund manager;
- (h) pursuant to clause 8.5 of subsection 127(1) of the Act, that Pelcowitz be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

- (i) pursuant to section 37 of the Act, that Pelcowitz be prohibited permanently from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities;
- (j) pursuant to clause 9 of subsection 127(1) of the Act, that Pelcowitz pay an administrative penalty in the minimum amount of \$300,000 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;
- (k) pursuant to clause 10 of subsection 127(1) of the Act, that Pelcowitz and IMG disgorge to the Commission a total of \$605,029.08 for which they shall be jointly and severally liable, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and
- (l) pursuant to section 127.1 of the Act, that Pelcowitz pay \$100,000 in costs.

DATED at Toronto this 17th day of July 2013.

“James D. Carnwath”

James D. Carnwath