



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 AiT ADVANCED INFORMATION TECHNOLOGIES  
CORPORATION, BERNARD JUDE ASHE and DEBORAH WEINSTEIN**

**HEARING HELD PURSUANT TO SECTION 144 OF THE ACT**

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**REQUEST FOR AN ORDER PURSUANT TO SECTION 144 OF THE ACT  
RE: AiT ADVANCED INFORMATION TECHNOLOGIES and BERNARD JUDE ASHE  
SETTLEMENT AGREEMENTS**

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HEARING: Wednesday, September 17, 2008

PANEL: Patrick J. LeSage, Q.C. - Commissioner and Chair of the Panel  
Wendell S. Wigle, Q.C. - Commissioner  
Carol S. Perry - Commissioner

APPEARANCES: Jane Waechter - for Staff of the Ontario Securities Commission  
Jessica Kimmel - for AiT  
John Fabello - for Bernard Jude Ashe

**ORAL RULING AND REASONS**

The following text has been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the decision.

**Chair:**

[1] This matter is an application by Staff pursuant to section 144 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the “Act”) to revoke two earlier orders of the Ontario Securities Commission (“the Commission”) and the results of those orders. Those orders issued following the ‘settlement agreements’ between the Staff of OSC, AiT and Ashe. Section 144 permits the Commission to make an order revoking or varying a decision of the Commission on the application of the Executive Director or a person or company affected by the decision if, in the Commission's opinion, the order would not be prejudicial to the public interest.

[2] First, let me say I commend Staff and the Executive Director for bringing this matter forward. The basis of the ‘settlement agreements’ was certain acts that occurred transgressed and violated section 75 of the Act. At a subsequent contested hearing, a learned panel, two members of whom are here with me today, Commissioner Wigle and Commissioner Perry, found on identical facts (there was never any difference in the facts upon which the original acknowledgments and orders were based and the subsequent facts), after a full hearing, that AiT was not in breach of section 75 of the Act and was not required to make timely disclosure of its negotiations with 3M for the purchase by 3M of all of the shares of AiT at the time specified in the allegations. That conclusion is found at paragraph 266 of the Reasons and Decision in *Re AiT Advanced Information Technologies Corp.* (2008), 31 O.S.C.B. 712 of the tribunal dated the 14<sup>th</sup> day of January, 2008. The subsequent paragraph, paragraph 267, repeats the conclusion in the sense that it says ‘having reached the conclusion that AiT did not breach section 75 of the Act, the allegations against Weinstein must be dismissed’.

[3] There are many reasons why this matter – the earlier settlements – should be set aside, notwithstanding that they were settlements and not hearings. First and foremost, as Mr. Fabello submitted, is logic and fairness. One can never go wrong using logic and fairness. Logic and fairness certainly dictates that the settlement agreements entered into by AiT and by Mr. Ashe ought to be revoked pursuant to section 144 of the Act. Notwithstanding that everyone, in good faith, at the time believed it to be a violation of the Act, the basis for that conclusion has subsequently been found not to have been a violation.

[4] The learned tribunal, having heard all of competing arguments on the issue, has determined there was not a violation of the Act. Mr. Ashe therefore could not be a party to AiT's being in violation of the Act because there was no violation of the Act. So it is absolutely not contrary to the public interest and, in fact, it is very strongly in the public interest that the order go as requested.

[5] I regret that Mr. Ashe has suffered personal and financial consequences. It is one of those things that happens and to the extent it can be righted, corrected, that is now being done. Thank you all very much. The order will go as per the consent order filed. Thank you, counsel, for your succinct, logical and persuasive submissions.

[6] For the record, our order issued September 17, 2008 pursuant to section 144 of the Act states the following:

IT IS HEREBY ORDERED pursuant to section 144 of the Act, on consent, that the Commission Orders dated February 26, 2007 in respect of Ashe and AiT be revoked.

IT IS HEREBY ORDERED pursuant to s. 144 of the Act, on consent, that the Commission's approval of the Settlement Agreements in its orders dated February 26, 2007 is revoked.

IT IS HEREBY ORDERED pursuant to s. 144 of the Act, on consent, that Ashe's reprimand by the Commission is revoked.

IT IS HEREBY DIRECTED, on consent, that the Commission pay to AiT the sum of \$60,000.00 in respect of costs and the sum of \$40,000.00 that was paid for allocation to or for the benefit of third parties pursuant to the AiT Agreement.

IT IS HEREBY DIRECTED, on consent, that the Commission pay to Ashe the sum of \$25,000.00 in respect of costs and the sum of \$15,000.00 that was paid for allocation to or for the benefit of third parties pursuant to the Ashe Agreement

Approved by the Panel on October 9, 2008.

*"Patrick J. LeSage"*

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Patrick J. LeSage, Q.C.

*"Wendell S. Wigle"*

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Wendell S. Wigle, Q.C.

*"Carol S. Perry"*

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Carol S. Perry