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Date: 2017-05-02

**IN THE MATTER OF
ISSAM EL-BOUJI, GLOBAL RESP CORPORATION,
GLOBAL GROWTH ASSETS INC.,
GLOBAL EDUCATION TRUST FOUNDATION and MARGARET SINGH**

REASONS AND DECISION ON A MOTION FOR DIRECTIONS AND OTHER RELIEF

Hearing: April 25 and 27, 2017

Decision: May 2, 2017

Panel: Timothy Moseley Commissioner and Chair of the Panel

Appearances: Kevin Richard For the moving parties Global RESP Corporation and Global Growth Assets Inc.

Michelle Vaillancourt For Staff of the Commission
Thomas Ng (Student-at-Law)

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ANALYSIS	2
A.	Introduction	2
B.	After a proceeding has ended, does the Commission retain any jurisdiction?	2
C.	Do the exceptions to the general “no jurisdiction” rule provide a basis for the Commission to hear this motion for directions?	3
D.	Does the Commission have jurisdiction to require the Director to grant Ms. Bouji’s application for registration?	5
III.	CONCLUSION	6

REASONS AND DECISION

I. INTRODUCTION

- [1] After a proceeding has ended, does the Commission retain jurisdiction to give directions to the parties or to grant other relief? If so, under what circumstances, and do those circumstances apply in this case?
- [2] This is a motion brought by two parties, Global RESP Corporation and Global Growth Assets Inc. who were respondents in an Enforcement proceeding. They settled that proceeding with Staff of the Commission in 2014 (the “**2014 Proceeding**”). The Commission issued an order (the “**2014 Order**”),¹ in which the Commission, among other things:
- a. permanently suspended Issam El-Bouji (“**Mr. Bouji**”), who was also a respondent in the 2014 Proceeding, as the Ultimate Designated Person (“**UDP**”) of the moving parties Global RESP Corporation and Global Growth Assets Inc., both of which firms are registered with the Commission;
 - b. required the two firms to appoint a new independent CEO and UDP to replace Mr. Bouji; and
 - c. prohibited Mr. Bouji, for nine years, from becoming or acting as a director or officer of, among other things, a registrant and an investment fund manager.
- [3] As required by the 2014 Order, the two firms appointed a new and independent CEO and UDP. That individual plans to step down soon. Mr. Bouji’s daughter, who is a registrant, has applied to the Commission to amend her registration to allow her to take over the role of UDP. Staff opposes her application, and in telling Ms. Bouji why, Staff referred to the 2014 Order. Staff says that until the end of the nine-year prohibition against Mr. Bouji, any new UDP must be independent, at least while Mr. Bouji continues to play an active role in the firms. Ms. Bouji is not independent.
- [4] The moving parties disagree with Staff about the Order’s effect. They ask the Commission:
- a. for directions about the Order; specifically, confirmation that the 2014 Order does not require that any UDP appointed after Mr. Bouji’s successor, and before the expiry of the nine-year period applicable to Mr. Bouji, be independent; and
 - b. to order the Commission’s Director to amend Ms. Bouji’s registration as requested.
- [5] Staff submits that the Commission does not have jurisdiction to consider this motion, because the 2014 Proceeding has concluded. Staff says that the proper place and time for Ms. Bouji to argue that Staff is improperly interpreting or applying the 2014 Order is in a hearing before the Director regarding her application for registration.

¹ (2014), 37 OSCB 4112.

- [6] The hearing of this motion was limited to the question of jurisdiction. At the end of the hearing, I advised that I was dismissing the motion, with reasons to follow. These are my reasons, which relate only to the question of jurisdiction and not to the merits of the motion.
- [7] As I explain below, I conclude that as soon as the 2014 Proceeding ended, so did the Commission's jurisdiction regarding that proceeding, with limited exceptions that do not apply in this case.

II. ANALYSIS

A. Introduction

- [8] Staff's objection raises three issues:
 - a. After a proceeding has ended, does the Commission retain any jurisdiction?
 - b. If so, does that jurisdiction provide a basis for the Commission to hear this motion for directions?
 - c. Does the Commission have jurisdiction to require the Director to grant Ms. Bouji's application for registration?

- [9] I will deal with each issue in turn.

B. After a proceeding has ended, does the Commission retain any jurisdiction?

- [10] I must first determine whether the Commission has jurisdiction with respect to a matter once the matter has ended. The moving parties submit that a tribunal has jurisdiction forever to give directions about a previous order, even if the tribunal does not provide for that in the order. I do not accept that submission. For the following reasons, I conclude that once a matter has ended, the tribunal has no further jurisdiction, subject to limited exceptions.
- [11] Unlike superior courts, the Commission has no inherent jurisdiction. The Commission possesses only those powers that the legislature grants it.² Virtually all of those powers are found in the *Securities Act* (the "**Act**"),³ which is the Commission's enabling statute. Other powers may be found in the *Statutory Powers Procedure Act*,⁴ which applies to tribunals generally.
- [12] Normally, a tribunal loses jurisdiction at the end of a proceeding. This principle, often known by the Latin term *functus officio*, means among other things that except in limited circumstances, parties cannot return to the tribunal asking for supplementary reasons. The principle promotes the expeditious resolution of disputes, the finality of proceedings, certainty for those affected by the tribunal's decisions, and conservation of adjudicative resources.⁵

² *Tranchemontagne v Ontario (Director, Disability Support Program)*, 2006 SCC 14 (CanLII) at para 16.

³ RSO 1990, c S.5.

⁴ RSO 1990, c S.22 ("SPPA").

⁵ *Chandler v Assn. of Architects (Alberta)*, [1989] 2 SCR 848 at paras 75, 76 ("Chandler"); *Jacobs Catalytic Ltd. v International Brotherhood of Electrical Workers, Local 353*, 2009 ONCA 749 (CanLII) at para 49 ("Jacobs").

- [13] Sometimes at the end of a proceeding the tribunal will issue an order that expressly reserves jurisdiction for the tribunal after the order is issued. A common purpose of doing this is to enable parties to ask the tribunal for directions if the parties have any difficulty implementing the order. Such provisions have their own limitations, which I need not consider, because the 2014 Order did not have one.
 - [14] In some instances, a tribunal's jurisdiction is based on its power to determine its own procedures and practices.⁶ However, that power "does not extend to post-judgment jurisdiction" and does not include an ability to "clarify previous decisions".⁷
 - [15] Because neither the Commission's general powers nor the terms of the 2014 Order confer authority on the Commission to give the directions that the moving parties seek, any authority to make a further decision regarding the proceeding must either:
 - a. arise because the parties seek to remedy a slip or error present in the 2014 Order, which slip or error resulted in the Commission not having expressed its manifest intention;⁸ or
 - b. be specifically conferred by statute.
 - [16] I must therefore determine whether on the facts of this case, the Commission has jurisdiction based on either of those two exceptions.
- C. Do the exceptions to the general "no jurisdiction" rule provide a basis for the Commission to hear this motion for directions?**
- [17] In my view, neither of the exceptions is available to the moving parties.
 - [18] The first exception, used where necessary to remedy a slip or error, does not apply. None of the parties says that there was a slip or error in the 2014 Order. The parties agree that the terms of the 2014 Order are clear and unambiguous.
 - [19] As for a statutory basis for this motion, the moving parties did not assert any such basis, and none is apparent. Section 144 of the Act does empower the Commission to make an order revoking or varying a previous decision of the Commission. However, the moving parties expressly chose not to bring an application under that section. Their choice is consistent with the fact that they are not concerned about the decision itself, but rather about how Staff is applying that decision.
 - [20] The moving parties' concern about Staff's position with respect to Ms. Bouji's application is reasonable, and arises from the e-mails and correspondence described in the following paragraphs.
 - [21] Staff has consistently said that it considers Ms. Bouji's proposed registration to be "otherwise objectionable", within the meaning of clause 27(1)(b) of the Act. However, in written communication to the moving party firms, Staff has been inconsistent about the reasons for its position.

⁶ SPPA, s 25.0.1.

⁷ Jacobs at para 62.

⁸ Chandler at para 75.

- [22] For some time, it seemed clear that Staff was effectively reading in new terms to the 2014 Order. A December 19, 2016, e-mail from a Senior Legal Counsel in the Commission’s Compliance and Registrant Regulation Branch to the General Counsel for the moving party firms advised that:

[Staff’s] position is that the most appropriate reading of the Order provides that an independent UDP is required for so long as the Order is in force, absent a variation of the Order.

- [23] The e-mail is categorical, it contemplates no other factors that would be relevant to Staff in considering any application from a proposed UDP, and it echoes the position Staff set out more than a year earlier, in a November 4, 2015, e-mail between the same individuals.
- [24] In a letter sent by Staff to Ms. Bouji two weeks before the hearing of this motion, Staff put its position differently, although the effect of the change is not clear. In the third paragraph of the letter, Staff says that its recommendation is based on the 2014 Order and “in light of Mr. Bouji’s active involvement in the business of Global RESP”, suggesting that these two factors combine to make Ms. Bouji’s application objectionable.
- [25] However, that sentence is followed by a half-page section headed “*The Amendments Requested in the Application are Objectionable Given the Terms of the Order*”. The section reiterates the position in the two e-mails referred to above, in that it says that Ms. Bouji’s application is objectionable simply as a result of the 2014 Order.
- [26] That characterization is consistent with the next section of the letter, which is headed “*Mr. Bouji’s Ongoing Role at Global RESP Underscores the Need for an Independent UDP*”. That section, and the use of the word “Underscores” in the heading, give the impression that in Staff’s view Mr. Bouji’s ongoing role is not a necessary component of Staff’s objection; rather, that it reinforces Staff’s view, which Staff already holds, that the proposed registration is objectionable.
- [27] At the hearing of this motion, Staff again expressed its position differently. Staff counsel fairly and correctly conceded that the terms of the 2014 Order do not, by themselves, require that a new UDP for the two firms be independent. Staff states that its position with respect to Ms. Bouji’s application is that her lack of independence is disqualifying at this time, given the active role of her father, Mr. Bouji, in the firms.
- [28] While I am sympathetic to the moving parties’ concerns given the history, those concerns cannot clothe the Commission with jurisdiction it does not have. As noted above, and as is evident from the moving parties’ submission that they are not “putting the decision in play”, the parties agree on what the 2014 Order explicitly requires and prohibits. The parties disagree on the further consequences, if any, that should flow from that order, in the context of an application for registration of a new UDP.
- [29] The *Act* provides for the process by which an individual can seek registration. The individual submits her/his application to a Director of the Commission.⁹ Staff

⁹ *Act*, s 27; NI 33-109 *Registration Information*, s 2.2; NI 14-101, *Definitions*, subsection 1.1(3) “regulator”.

makes a recommendation to the Director and communicates that recommendation to the applicant. If the applicant is dissatisfied with Staff's recommendation, the applicant may require a hearing before the Director.¹⁰ The Director considers the positions of both parties and makes a decision. If the applicant is dissatisfied with the decision, he/she may request and is entitled to a hearing and review of the Director's decision by the Commission.¹¹

- [30] The distinction referred to in paragraph [28] above, that the moving parties disagree not about what the order says but about its consequences when other circumstances are considered, is critical. The moving parties submit that the "concept of *functus officio* has no bearing in this matter [because they] are not seeking an alteration" of the 2014 Order. Not only are they not seeking an alteration, they are not seeking an interpretation or an explanation. They are effectively seeking a determination, in advance of a possible hearing before the Director, of an issue that may come before the Director.
- [31] The proper venue for Ms. Bouji to challenge Staff's objection to her application is before the Director. Ms. Bouji may get a favourable decision. If she does not, she may then require a review of that decision before the Commission, if she wishes. Her objection to Staff's position does not give her a basis for having the Commission resolve the dispute now.

D. Does the Commission have jurisdiction to require the Director to grant Ms. Bouji's application for registration?

- [32] The moving parties were unable to cite a specific provision of the Act that would support their request for an order directing the Director to approve Ms. Bouji's application. They referred to section 8, which provides for the hearing and review referred to above, and submitted that the Commission's oversight of Directors, as embodied in that section, leads to the natural conclusion that the Commission can require a Director to approve an application for registration. The moving parties submit that I ought to make that order in this case.
- [33] I do not agree, for several reasons:
 - a. clear authority for the Commission to make such an extraordinary order would be required, and none exists;
 - b. as of the hearing of this motion, the Director has not been asked to hold a hearing regarding Ms. Bouji's application; and
 - c. even if the authority existed for the Commission to make the requested order, it would be inappropriate to permit an applicant to bypass the statutory process.

¹⁰ *Act*, s 31.

¹¹ *Act*, subsection 8(2).

III. CONCLUSION

- [34] For the reasons set out above, I conclude that in the circumstances of this case, the Commission does not have jurisdiction to consider the moving parties' request for directions in respect of the 2014 Order, or their request for an order requiring the Director to approve Ms. Bouji's application. The motion is dismissed.

Dated at Toronto this 2nd day of May, 2017.

"Timothy Moseley"

Timothy Moseley