



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: *Jawhari (Re)*, 2017 ONSEC 36
Date: 2017-10-11

**IN THE MATTER OF
KHALID WALID JAWHARI**

**REASONS FOR DECISION
(Subsections 127(1) and (10) of the *Securities Act*, RSO 1990, c S.5)**

Hearing: October 10, 2017

Reasons: October 11, 2017

Panel: Philip Anisman Commissioner

**Appearances
by:** Malinda N. Alvaro For Staff of the Commission
Khalid Walid Jawhari not appearing

REASONS FOR DECISION

- [1] On March 22, 2017, Khalid Walid Jawhari entered a settlement agreement and undertaking (Settlement Agreement) with the Alberta Securities Commission (ASC),¹ in which he admitted to having engaged in insider trading in shares of Artek Exploration Ltd. (Artek) preceding a public announcement of a takeover offer for Artek by Kelt Exploration Ltd. (Kelt), contrary to the Alberta *Securities Act*² and the public interest. Mr. Jawhari's wholly-owned corporation, 1601590 Alberta Ltd., purchased over 40,000 shares, which it sold less than a week later, following the announcement of the proposed acquisition, for a net profit of almost \$40,000. At the time he traded, the shares of Artek and Kelt were listed for trading on the Toronto Stock Exchange (TSX).
- [2] On August 30, 2017, the Ontario Securities Commission (the Commission) issued a Notice of Hearing, based on a Statement of Allegations of Staff of the Commission (Staff) dated August 29, 2017, pursuant to subsections 127(1) and 127(10) of the Ontario *Securities Act*³ (the Act), giving notice of a hearing to be held on September 26, 2017.
- [3] Mr. Jawhari did not appear at the hearing on September 26, although he had been properly served.⁴ Staff Counsel informed the Commission that Staff had been in contact with Mr. Jawhari earlier that day, and an adjournment was granted to permit them to prepare an order for his consent.⁵ The hearing reconvened on October 10, 2017.
- [4] Following the hearing on September 26, 2017, Staff sent a draft order and form of consent to Mr. Jawhari.⁶ Although he did not sign the form, Mr. Jawhari indicated his consent in an email dated October 2, 2017.⁷
- [5] An order reciprocating the sanctions agreed to by Mr. Jawhari in the Settlement Agreement is clearly in the public interest. Mr. Jawhari, after receiving a tip from a friend employed by Kelt, engaged in a type of insider trading that undermines investor confidence in the integrity of our securities markets and has long been universally condemned.⁸ As it is reasonable to infer that his purchase and sale were executed through the TSX, his trading reflects the national scope of the securities markets in Canada and affected the integrity of the market in Ontario.⁹
- [6] The order made today (the Order) requires a brief explanation. The Settlement Agreement prohibits Mr. Jawhari from trading in securities. The order requested in the Notice of Hearing and the draft order to which he consented go further and

¹ *Re Jawhari*, 2017 ABASC 51.

² *Securities Act*, RSA 2000, c S-4, s. 147(3), as amended (the **ASA**).

³ *Securities Act*, RSO 1990, c S.5, as amended (the **Act**).

⁴ Exhibit 1, Affidavit of Service of Lee Crann, sworn September 21, 2017.

⁵ *Re Jawhari* (2017), 40 OSCB 8101 (Order, September 26, 2017).

⁶ Exhibit 2, Email of Lee Crann, September 26, 2017.

⁷ Exhibit 3, Email of Kelly Jawhari, October 2, 2017.

⁸ See, e.g., *Report of the Attorney General's Committee on Securities Legislation in Ontario* (J. R. Kimber, Chair, 1965), para. 3.08 ("most controversial feature of take-over bid transactions in recent years").

⁹ Although conduct in Ontario is not a prerequisite for a reciprocal order, the facts in this case illustrate the need for the interprovincial cooperation furthered by provisions like subsection 127(10); see Act, s. 2.1(5); and see *Re Dhanani* (2017), 40 OSCB 4457.

would have prohibited him from trading in both securities and derivatives.¹⁰ Although Staff submitted that the broader prohibition is necessary to protect investors in Ontario, the Settlement Agreement does not refer to trading in derivatives and Mr. Jawhari was not represented by counsel in this proceeding. As the Order is intended to reciprocate the sanctions agreed to by Mr. Jawhari¹¹, it prohibits him only from trading in or purchasing securities.

- [7] The Settlement Agreement prohibits only “trading” in securities,¹² which is defined in both the ASA and the Act as including sales, not purchases.¹³ As Mr. Jawhari purchased shares of Artek ahead of, and sold them after, the announcement of Kelt’s acquisition offer, the Order prohibits Mr. Jawhari from trading and purchasing securities for a three-year period ending March 22, 2020. The prohibition in the Order thus reciprocates the substance of the Settlement Agreement in a manner that is necessary to protect investors and the securities market in Ontario.

Dated at Toronto this 11th day of October, 2017.

“Philip Anisman”

Philip Anisman

¹⁰ Exhibit 1, Tab 1, Notice of Hearing, August 30, 2017; Exhibit 2, Draft Order, para 1.

¹¹ See Act, s. 127(10)5.

¹² Exhibit 1, Tab 1, Settlement Agreement, para. 22.2.

¹³ Act, s. 1(1) “trade” (a); ASA, s. 1(jjj)(i). Nevertheless, the Settlement Agreement contains a carve-out permitting both trades and purchases by Mr. Jawhari in an account in his or his numbered corporation’s name.