

March 12, 2007

**IN THE MATTER OF: THE SECURITIES ACT**

- and -

**IN THE MATTER OF: ROBERT SYME**

**REASONS FOR DECISION  
OF  
THE MANITOBA SECURITIES COMMISSION**

**Panel:**

Chair	Mr. D.G. Murray
Commission Members:	Mr. D.H. Smith Mr. J.W. Hedley

**Appearances:**

Mr. S. Gingera ) Counsel for the  
Commission

This matter initially came on for hearing July 26, 2006 at 9:00 a.m. The Respondent, Mr. Syme, did not attend and personal service of the Notice of Hearing and Statement of Allegations had not been effected. Attempts to serve Mr. Syme personally at the last address he had provided Commission staff were unsuccessful. Registered mail containing the Notice of Hearing and Statement of Allegations went unclaimed.

At the hearing the panel adjourned the matter to October 11, 2006 at 9:00 a.m.

In the interim personal service of the Notice of Hearing and Statement of Allegations and notification of the new date of October 11, 2006 was made on Mr. Syme. Again, Mr. Syme did not attend at the scheduled return date. At that time the panel set a hearing date of February 12 & 13, 2007 for the full hearing of this matter on its merits.

Commission staff again provided notification of the final date to Mr. Syme at his last known address by certified mail. Again, the materials were unclaimed.

On Monday, February 12, 2007 at 9:00 a.m. Mr. Syme did not present himself. In order to ensure that the Respondent simply was not running late the panel did not convene the hearing until 9:15 a.m. The panel determined that Mr. Syme had been duly served with the materials that he had been given fair and adequate notice of the matter, and that the hearing would proceed in his absence.

In the Notice of Hearing the Director seeks an order denying Syme access to the exemptions under Section 19 of The Securities Act (the "Act"). In addition, he seeks orders of financial compensation under Section 148.2 of the Act in favour of Michael Bretecher in the amount of \$10,000.00, Diane Wasylnuk in the amount of \$5,000.00 and Darren Payne in the amount of \$5,000.00, as well as costs. During the hearing, Commission counsel, Mr. Gingera, tendered documentary evidence and called three witnesses.

The Statement of Allegations alleged that Robert Syme was involved in the raising of capital for a company called Microbex. For his efforts he was to be allocated 175,000 shares in the corporation valued at \$1.00 each. The Statement of Allegations further states that although not being registered under the Act to trade in securities, Syme sold from this allocated block of shares, to three individuals. This is in contravention of Section 6 of the Act. The three individuals were the aforementioned Michael Bretecher, Diane Wasylnuk and Darren Payne.

Michael Bretecher was called and sworn as a witness. He testified that he met Robert Syme in June of 2000 through a colleague from work. He went to the offices of Microbex in order to meet Syme. Syme offered to sell to Mr. Bretecher shares in Microbex, which he explained had been issued to him for the sum of \$10,000.00. The transaction was to be for 10,000 shares in Microbex.

Mr. Bretecher paid Syme \$10,000.00 by personal cheque made out to "Rob Syme". The cheque was tendered as Exhibit 13 in the proceedings. Mr. Bretecher's cheque was cashed. Neither at the time of the trades nor at any subsequent time did Mr. Bretecher receive a prospectus or any other written information with respect to the investment. He received no shares and no part of his \$10,000.00 payment was returned to him. At no time during his dealings with Mr. Bretecher or for that matter with Ms. Wasylnuk or Mr. Payne, was Syme registered to trade in securities as set out in the Certificate of Director (Exhibit 11).

Syme's actions in trading without registration to Mr. Bretecher and the other two individuals for whom financial compensation is claimed was the subject of Provincial Court proceedings brought by Commission counsel. Count #1 of the Information in this matter (Exhibit 6) contains an allegation that Robert Syme traded in securities without being registered in contravention of Section 136(1)(c) of the Act in connection with a trade to Michael Bretecher for consideration of \$10,000.00. The Disposition Sheet (Exhibit 7) indicates that Robert Syme pleaded guilty to this count and was fined. The Director seeks on behalf of Mr. Bretecher financial compensation in the sum of \$10,000.00.

Diane Wasylnuk was then called and sworn as a witness. Ms. Wasylnuk testified that she is a resident of Winnipeg who met Robert Syme as a result of an earlier investment she had made in Microbex. Ms. Wasylnuk testified that she was approached by Syme to acquire an additional 5,000 shares in the company from his own personal holdings for a payment of \$5,000.00. She agreed to purchase these shares and issued a cheque in the amount of \$5,000.00 for this purpose made payable to "Rob Syme". This cheque is Exhibit 14 in the proceedings. Despite making payment she received no shares and no written information concerning the investment. She also testified that she did not receive a return of the \$5,000.00 or any portion thereof.

Exhibit 6 also alleges in Count #13 that Robert Syme traded in securities without being registered to Diane Wasylnuk for consideration of \$5,000.00. Syme pleaded guilty to this charge as noted in Exhibit 7. The Director seeks on behalf of Ms. Wasylnuk financial compensation in the sum of \$5,000.00.

The last witness to be called and sworn was Darren Payne. Mr. Payne is also a resident of Winnipeg who met Syme in either April or May of 2000. His story is similar to that of Mr. Bretecher and Ms. Wasylnuk in that he was offered shares in Microbex from Syme's personal holdings which he agreed to purchase. Initially Mr. Payne provided payment in the amount of \$2,000.00 cash for 2,000 shares from Syme's holdings in Microbex. As this payment was made in cash there is no record of it and a receipt was never provided by Mr. Syme. Like Mr. Bretecher and Ms. Wasylnuk Mr. Payne also received no prospectus or other written information concerning the investment. He similarly received neither the shares for which he paid nor a return of any part of the money.

Exhibit 6 notes in Count #15 that Syme has alleged to have sold 2,000 shares from his own holdings in Microbex to Mr. Payne for \$2,000.00. Exhibit 7 confirms that Mr. Syme pleaded guilty to this charge.

While Syme pleaded guilty to unauthorized trading in securities with Mr. Payne in the amount of \$2,000.00 the Director is seeking an order of financial compensation in favour of Mr. Payne in the amount of \$5,000.00. Mr. Payne testified the balance of the \$5,000.00 claimed came as a result of an agreement between Messrs. Syme and Payne for work done for Syme in the promotion of a product that Microbex had been set up to distribute. He testified that after working at Syme's request for several shifts over a period of 30 to 40 weeks he delivered a bill for his services to Syme in the amount of \$3,000.00. Mr. Payne testifies that Syme offered to pay him by transferring an additional 3,000 shares in Microbex from his personal holdings which he valued at \$3,000.00. He indicates that Syme characterized this as a "ground floor opportunity" which Mr. Payne accepted.

As with the initial \$2,000.00 investment there was no receipt provided and no written evidence of the transaction. In addition, the 3,000 shares were never transferred and Mr. Payne never received from Syme any of the \$3,000.00 owed.

The evidence convinces the panel that Syme received a benefit from Mr. Payne with a value of \$3,000.00 and that he agreed to transfer 3,000 shares in Microbex to him on account thereof. Under the Act, "trade" is defined to include: "(a) any sale or disposition of or other dealing in or any solicitation in respect of a security **for valuable consideration**....."(emphasis added). While cash did not change hands the panel finds that this transaction nevertheless constitutes a trade under the Act.

It is interesting to note another aspect of Mr. Payne's testimony concerning his dealings with Syme. He testified that when certain other individuals connected to Microbex learned that Syme was reputed to resell shares allocated to him to third parties, a meeting of the shareholders was called to discuss the issue. He further testifies that prior to the meeting, in an apparent effort to cover up his actions, Syme asked him to indicate if asked that the shares had been gifted to him.

This version of events was also recited by Commission counsel, Mr. Gingera, at Syme's disposition hearing in Provincial Court, to which counsel for Syme did not take issue. (Certified copy of transcript of proceedings, Exhibit 9).

### **Decision**

The Notice of Hearing seeks an order denying Syme access to the exemptions under the Act. This order was made by the panel immediately following the hearing. The request for orders for financial compensation were put over for further consideration by the panel.

Orders of financial compensation cannot be given by the Commission, nor sought on anyone's behalf by the Director, as a stand alone remedy. Such an order can only be considered if it forms a part of requested relief from a regulatory breach that is traditionally within the Commission's purview. This is clearly the case in the matter at hand where the request for compensation is connected to and resulting from findings by the panel of breaches of the legislation by Syme in trading without registration contrary to Section 6 of the Act which in turn constitutes an offence triable in Provincial Court pursuant to Section 136 of the Act.

The authority for the Commission to make an award for financial compensation is set out in Section 148.2 of the Act. In this instance, to make an order for compensation for financial loss the panel must find, pursuant to Section 148.2(3):

- (a) that the person has contravened or failed to comply with a provision of the Act or the Regulations;
- (b) that the amount of financial loss can be determined on the evidence; and
- (c) that the persons' contravention caused the financial loss in whole or in part.

The evidence presented allowed the panel to find:

- (a) That Syme, in selling shares from his personal allocation to third parties acted in contravention of Section 6 of the Act;
- (b) The amounts of financial compensation suffered by Mr. Bretecher, Ms. Waslynuk and Mr. Payne are the amounts paid to Syme for the transfer of shares, which funds have not been repaid in any amount; and
- (c) Syme's contravention of the Act in purporting to trade in shares illegally is a direct cause of the loss to each of these individuals.

The panel therefore decides there will be orders of compensation for financial loss against Syme personally as follows:

1. \$10,000.00 payable to Michael Bretecher;
2. \$5,000.00 payable to Diane Waslynuk; and
3. \$5,000.00 payable to Darren Payne.

Commission counsel made no representation concerning costs.

"D.G. Murray"

D.G. Murray

Chair

"D.H. Smith"

D.H. Smith

Member

"J.W. Hedley"

J.W. Hedley

Member