

December 12, 2007

IN THE MATTER OF: THE SECURITIES ACT

-and-

**IN THE MATTER OF: M.R.S. TRUST COMPANY, B2B TRUST,
W.H. STUART MUTUALS LTD., ERIC
SONEGO,
INGRAM JEFFREY ESHUN, JOSEPHUS
DELACORE
LEWIS AND MARILYN DIANNE STUART**

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

Panel:

Chairman: Mr. D. G. Murray
Commission Ms. K.E. Hughes
Members:

Ms K. Laycock) Counsel for the Commission
Mr. C. Wright) Counsel for the Respondent

Appearances:

Mr. S. Gingera) Counsel for the Commission
) No appearance on behalf of the Respondents

The panel heard this matter December 11, 2006. The hearing dealt only with the Respondents Josephus Delacore Lewis (Lewis) and Eric Sonogo (Sonogo). Other named Respondents had been dealt with separately prior to that time.

Although having been properly served, neither Lewis nor Sonogo attended at the hearing. It should be pointed out that Lewis had requested and received earlier adjournments of this matter. By a telephone hearing with the panel on December 8th Lewis was advised that the hearing would proceed December 11th whether or not he attended.

The only evidence received was from Jan Banasiak, Senior Investigator of the Manitoba Securities Commission, who provided sworn testimony. Mr. Gingera, counsel for staff provided the panel with three binders of documents obtained in the investigation of this matter to which Mr. Banasiak referred in his testimony. In addition, staff counsel entered some 25 Exhibits through testimony and during argument.

Lewis and Sonogo, neither of whom are registered to sell securities in Manitoba, were Ontario residents who were parties to a scheme, which also involved the other named Respondents, that has been seen by securities regulators in the past few years all too often. The scheme is developed as a method of providing willing account owners a means to access funds in their locked-in pensions or RRSPs.

Mr. Banasiak provided testimony as to the standard makeup of these schemes. The promoters tend to make contact with Manitobans with locked-in funds by advertising through various media outlets and through local agents. Meetings are set up for those individuals interested. The owners of locked-in funds are asked to sign a number of documents including a direction to transfer the proceeds of these funds to a financial services provider such as a trust company or mutual fund dealer as well as account opening documentation and trade instructions.

These documents are forwarded to the promoters of the schemes. A registrant is required at this point to identify himself as the client's account representative and cause the fund account to be opened with the financial services provider. Typically the registrant is simply a part of the scheme and is not acting in the interests of or with any specific knowledge of the client or his or her financial situation or risk tolerance. The intent of these schemes is not to put good or appropriate investments into the accounts, it is to put part of the proceeds into the hands of the account owners prior to retirement and pay out the balance of the money to the other participants in the scheme.

Once the new account is set up the promoter of the scheme forwards a direction for the locked-in funds to be sent for deposit into the account which has been set up. Also the financial services provider has been given a direction to forward the locked-in funds to a Canadian Controlled Private Corporation (CCPC) in exchange for shares in that company at a set value. CCPCs can constitute a qualified investment for RRSPs provided the requirements prescribed by the Income Tax Act and Regulations are met. Typically the CCPC in these schemes is a shell company set up by the promoter, the shares of which do not qualify as RRSP investments. The scheme, however, includes an Accountant or someone purporting to be an Accountant, providing a letter confirming the CCPC shares are indeed eligible under the Income Tax Act and confirming the value of these shares for transfer purposes. The transfer is then made.

The promoters will then arrange, through a third party, for a "loan" of the bulk of the locked-in funds (often 70%) to be made to the owner of the account and the balance is retained by the

promoter. The financial service provider will continue to send statements for the account to the account owner, but despite the amount shown to be in the account, the shares are valueless.

The public policy reason behind locking-in the pension funds of employees at a certain age was to attempt to ensure that they would not be destitute on retirement. In taking part in this scheme, account owners are willing to take less than the full amount and reward the promoters handsomely in order to access part of the money early. This thwarts the policy and it is illegal. In those instances where the Canada Revenue Agency becomes aware of this activity the account owner tends to receive the shock of having the full value of the account assessed as income in one year and taxed accordingly.

Mr. Banasiak explained this standard form scheme in his testimony. He also provided specifics of the case at hand, obtained through the MSC investigation. The scheme promoted by Lewis followed this standard form. As indicated, the other participants, including the required registrant and the financial services providers have already been dealt with. This final hearing deals with the promoter, Lewis, and the "accountant", Sonogo.

It should be noted that this particular scheme included setting up accounts for in excess of 30 Manitoba holders of locked-in funds and involved the conversion of some \$995,400 in locked-in funds.

In his interview under oath, Sonogo admitted that he did not hold an accounting designation in Canada but passed himself off as such and provided qualifying letters to trust companies and one mutual fund dealer where accounts had been set up. The letters also confirmed a value for the securities of the CCPC. He provided these letters for a set fee, paid by or through the promoter. He was aware that his actions were improper, that the shares of the CCPCs involved did not qualify and were indeterminate or of no value. He was also aware that these letters were being relied on in the completion of these transactions.

The evidence showed that Lewis was the promoter and mastermind behind the scheme. Lewis arranged for agents in Manitoba, provided the CCPCs, being three Ontario numbered companies he either incorporated or controlled (1221634 Ontario Inc., 1259037 Ontario Inc. and 1343575 Ontario Inc.) and received and controlled the documents signed by those account holders wishing to convert their locked-in funds. He also arranged for the registrant necessary to set up the new accounts and for the "loan", which in this case was 70% of the funds transferred. Lewis retained the other 30%. Lewis, throughout, was not registered in any capacity under The Securities Act of either Manitoba or Ontario where he resides.

The three financial service providers who set up the accounts and who may not have been complicit in the scheme but were less than diligent in their operations, have settled with the Commission for a combined sum of \$95,000.00. These amounts have been paid. The registrant involved was assessed an administrative penalty of \$10,000.00. In considering administrative penalties for Sonogo and Lewis, staff counsel submits that Sonogo, while culpable is less so than Lewis. He was essentially employed by Lewis on a piece work basis. Staff recommends an administrative penalty of \$15,000.00 to \$20,000.00.

As for Lewis, he was the promoter and main beneficiary of the scheme. Based on a 30% share, Lewis improperly made about \$300,000.00 out of the scheme, less any expenses involved in furthering his ends. Lewis was never registered to trade in securities and the CCPCs through which shares were issued did not file a prospectus in any case. Staff counsel recommends that he be assessed the maximum administrative penalty allowable of \$100,000.00.

Staff counsel provided records of costs totaling some \$40,000.00. He recommended that they be assessed primarily against Lewis. Finally, he requested an order against both respondents denying them access to the exemptions under the Act and Regulations.

Decision

We are satisfied that staff counsel has proven his case and that the public interest demands the sanctions he seeks. The panel imposes the following sanctions:

1. Sonego

1. An indefinite denial of access to the exemptions under the Act and Regulations; and
2. An administrative penalty in the amount of \$20,000.00; and
3. Costs in the amount of \$5,000.00.

2. Lewis

1. An indefinite denial of access to the exemptions under the Act and Regulations; and
2. An administrative penalty in the amount of \$100,000.00; and
3. Costs in the amount of \$25,000.00.

"D.G. Murray"

D.G. Murray
Chair

"K.E. Hughes"

K.E. Hughes
Member