ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re GRS Hydrogen Solutions Inc., 2023 ABASC 63 **Date: 20230509**

GRS Hydrogen Solutions Inc. and
Albert Cerenzie

Panel:	Tom Cotter Kari Horn
Representation:	Albert Cerenzie for the Applicants
	Peter Verschoote Amanda Goodwin for Commission Staff
Submissions Completed:	March 30, 2023
Decision:	May 9, 2023

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I. INTRODUCTION

[1] Albert Cerenzie (**Cerenzie**) and GRS Hydrogen Solutions Inc. (**GRS**, and together with Cerenzie, the **Applicants**) applied for an order pursuant to s. 214(1) of the *Securities Act* (Alberta) (the **Act**) to vary or revoke an interim order (the **Interim Order**, cited as *Re GRS Hydrogen Solutions Inc.*, 2022 ABASC 167) issued by the Alberta Securities Commission (the **ASC**) (the **Application**).

[2] We received evidence from the Applicants and ASC staff (**Staff**) – affidavits and transcripts from the cross-examinations on those affidavits – along with their written and oral submissions. After hearing from the parties, we reserved our decision.

[3] For the following reasons, we dismiss the Application.

II. BACKGROUND

A. The Interim Order

[4] The Interim Order, made pursuant to ss. 33 and 198(1) of the Act, was issued on December 16, 2022. The Interim Order provided that Staff were investigating whether the Applicants had contravened Alberta securities laws and that it was in the public interest to issue the Interim Order given that the length of time required to conduct a hearing and render a decision could be prejudicial to the public interest. The Applicants consented to the Interim Order.

[5] The Interim Order imposed certain 12-month, market-access restrictions (the **Market-Access Bans**), including a prohibition on all trading in or purchasing of GRS securities (except repurchases or redemptions by GRS of GRS securities held by existing GRS investors), and a direction that the Applicants must cease trading in GRS securities, that they be denied the use of any prospectus exemptions contained in Alberta securities laws, and that they are prohibited from engaging in investor relations activities.

[6] The Interim Order also directed that until a notice of hearing arising from Staff's investigation is issued, certain material – specifically the Notice of Hearing (the **Notice of Hearing**) dated December 13, 2022, the affidavit filed in support of Staff's application for the Interim Order, and all other evidence admitted at the hearing for the Interim Order – would remain confidential and not be divulged except in accordance with s. 45 of the Act (the **Confidentiality Order**).

B. Application to Vary or Revoke the Interim Order

[7] The Application arose as a result of the unrepresented Applicants' correspondence dated February 21 and 23, 2023 requesting a hearing to consider whether the Interim Order should be varied or revoked pursuant to s. 214(1) of the Act. The Applicants complained that Staff violated the Interim Order by:

- publishing the Notice of Hearing on an ASC "website press release", contrary to the Confidentiality Order;
- precluding GRS from repurchasing or redeeming GRS securities held by existing GRS investors; and

- providing confidential information to a third party (**MF**), who made misleading and false statements and released the names of individuals involved with GRS.

[8] Staff acknowledged that the Notice of Hearing was publicly available for a two-week period contrary to the Confidentiality Order, but submitted that the Applicants had not demonstrated that a revocation or variation of the Interim Order would not be prejudicial to the public interest. Staff argued that the Interim Order should be maintained, at least until Staff have completed their investigation and determined what steps, if any, should follow.

III. SECTION 214 OF THE ACT

[9] Section 214(1) of the Act allows an ASC panel to make an order revoking or varying an ASC decision in circumstances where it would not be prejudicial to the public interest to do so. This provision should be used sparingly, typically in circumstances where new facts have emerged that compel a change to an existing order but not where an aggrieved party seeks to second-guess or reconsider the public-interest findings of the original decision-maker (*Re Kostelecky*, 2017 ABASC 44 at para. 20 and 27).

IV. DEVELOPMENTS SINCE THE INTERIM ORDER

[10] We outline here the developments that have occurred since the issuance of the Interim Order.

A. News Release and Violation of Confidentiality Order

[11] On December 20, 2022, an ASC news release (the **News Release**) announced the issuance of the Interim Order. While the dissemination of the Interim Order and the News Release were not prohibited by the Confidentiality Order, the News Release included a link to the Notice of Hearing, which had been mistakenly posted to the ASC's website.

[12] Staff learned of the mistake on January 3, 2023 and took immediate steps to disable the offending link in the News Release and remove the Notice of Hearing from the ASC website. Staff also sent an email to the Applicants to advise them of the error and that it had been corrected.

[13] MF, an Ontario resident, learned of the News Release and the Interim Order in late December 2022, which led him to think that he may have been misled about a $5,000 payment he made to GRS in August 2022. He contacted ASC Staff, who learned that MF had obtained a copy of the Notice of Hearing from the ASC website and that he also provided it to an anti-fraud organization.

[14] The Applicants claimed that other websites had posted information in connection with the Interim Order, although it was unclear from the evidence whether these websites contained information subject to the Confidentiality Order. In their correspondence with Cerenzie, Staff explained that the Confidentiality Order did not apply to the Interim Order itself and that it was the publication of the Notice of Hearing on the website, and the link in the News Release, that contravened the Confidentiality Order.

[15] Cerenzie also received a letter dated March 16, 2023 from a business associate who expressed concerns about working with Cerenzie after learning of the Interim Order and the ASC's

investigation. There was no suggestion that the author obtained information subject to the Confidentiality Order, and the fact that the letter was dated more than two months after the removal of the Notice of Hearing from the ASC website suggested otherwise.

B. MF's Payment to GRS

[16] In early January 2023, MF spoke with a Staff investigator about his payment to GRS. That payment was made on or about August 1, 2022, and was deposited directly to GRS's bank account (the **Account**) with the Royal Bank of Canada (**RBC**) by way of three online transfers (two in the amount of $2,000 and another in the amount of $1,000). MF understood from his review of a GRS website and subsequent communications with GRS's investor-relations team in July 2022 that GRS was pursuing an initial public offering and a listing on the Toronto Stock Exchange, which persuaded him to invest in the company.

[17] MF received a number of documents in connection with his payment to GRS, namely a non-disclosure agreement, a subscription agreement, payment instructions to the Account, and an invoice from GRS (which identified MF as a "shareholder"). These documents provided that MF was subscribing for 1,000 GRS shares, as part of a distribution that purported to rely on an unidentified exemption from the prospectus and registration requirements under the Act.

C. Attempts to Recover Payment and Account Restrictions

[18] In early January 2023, MF contacted both RBC and Cerenzie (GRS's sole director) in hopes of recovering his $5,000 payment. In his email to Cerenzie, MF stated that he had not received an update from GRS since July 2022 and he recently became aware of the Interim Order. He also explained his concern that the payment to GRS might have been part of an investment scam, in part because he had been unable to contact GRS's investor-relations team to find out what happened with his investment.

[19] Cerenzie's initial response to MF focused on whether he could provide a signed share purchase agreement. When he could not, Cerenzie claimed that MF was not an approved or accredited investor, and he characterized MF's assertions of being a GRS "shareholder" as false and misleading. The Applicants did not dispute that MF paid $5,000 to GRS or that GRS should return those funds to MF.

[20] On or about January 11, 2023, RBC placed certain restrictions on the Account (the **Account Restrictions**) that prevented GRS from transferring or withdrawing funds, although funds could still be deposited into the Account. Cerenzie first learned of the Account Restrictions on January 11. He attended an RBC branch in Red Deer later that day and spoke with the branch manager, who informed him of the Account Restrictions and apparently mentioned the ASC's investigation.

[21] On February 2, 2023, Cerenzie attended the RBC branch in Sylvan Lake where he and the acting manager called an RBC investigator about the Account. Cerenzie was told that RBC was investigating MF's transfer of funds into the Account and he was given a copy of an Account statement identifying the transfers of MF's funds into the Account. Cerenzie said that the ASC's investigation was also mentioned in that conversation.

V. ANALYSIS

A. Applicants' Position

[22] The objective of the Application was somewhat opaque, largely due to the lack of clarity on whether the Applicants sought either a revocation or a variation of the Interim Order. They claimed that the "most important thing" was to lift the Account Restrictions so they could return the $5,000 payment to MF, but they did not explain how the Interim Order could be revised to accomplish this objective. Instead, they claimed that they were not a threat to the public, questioned the ASC's jurisdiction over GRS, and complained about the public disclosure of the Interim Order and Staff's investigation.

[23] Staff submitted that the Applicants' claims were based on incorrect or incomplete information, and that any revocation or variation to the Interim Order would be prejudicial to the public interest.

[24] We address each of the Applicants' complaints in turn.

1. ASC's Jurisdiction

[25] Despite their consent to the Interim Order, the Applicants questioned the ASC's jurisdiction over GRS as a private company whose shares are not publicly traded on an exchange. In oral submissions, they suggested that they were not trading shares and that it should be the RCMP rather than the ASC that conducts any investigation.

[26] The Act provides the ASC with responsibility for the administration of Alberta securities laws (s. 11). The scope of this authority encompasses a number of circumstances, including those in which a person or company:

- distributes securities, whether pursuant to a prospectus or in reliance on an exemption from the prospectus requirement;
- engages in any act, practice or course of conduct relating to a security that perpetrates a fraud on any person or company;
- represents that a security will be listed on an exchange or that an application has been made to list a security on any exchange; or
- makes a statement that the person or company knows or ought to know is misleading or untrue and would reasonably be expected to have a significant effect on the market price or value of a security.

[27] The activities undertaken by, and on behalf of, the Applicants involved raising capital from the public (including Alberta investors) through the distribution of GRS shares in reliance on certain prospectus exemptions available under Alberta securities laws. Cerenzie's evidence was that he engaged a third-party investor-relations group to raise capital on behalf of GRS after he had been contacted by someone offering to solicit investment capital for GRS pursuant to a "private exemption". To that end, the investor-relations group created a website to promote GRS, which contained representations that GRS was pursuing a listing of GRS shares on the Toronto Stock Exchange in conjunction with the distribution of GRS shares. Prospective investors could submit inquiries through the website, and they would be contacted by the investor-relations team who would coordinate their investment by providing them with certain documentation and directing

payment of investment funds to the Account. Cerenzie denied having direct involvement with the investor-relations team or speaking with investors who acquired shares through that team. Nevertheless, GRS received funds from investors, and Cerenzie signed investment documents on behalf of GRS.

[28] Clearly, the Applicants' impugned market activities are within the scope of the ASC's jurisdiction to administer Alberta securities laws pursuant to the Act.

2. Public Interest

[29] The Applicants asserted that they did not pose a threat to the public, and pointed to GRS's business contracts said to be worth tens of millions of dollars that were the culmination of approximately 30 years in the industry. The Applicants also submitted that they were no longer raising money and suggested that GRS was a "nonpublic trading company" with a limited number of shareholders – including only four in Alberta and seven in Ontario – who privately invested in the company.

[30] The Applicants did not submit new evidence or rely on any subsequent developments that had not been considered when the Interim Order was issued in December 2022. Rather, their submissions on this point relied solely on affidavit evidence that was before the panel when it issued the Interim Order.

[31] The Applicants' public interest argument implicitly asked for a reconsideration of the decision to issue the Interim Order, which was made in the public interest. That is not the purpose of s. 214(1) of the Act – that provision is not meant to be an appeal mechanism or to give a party an opportunity to reargue the public-interest findings previously made by an ASC panel. For that reason, we are not prepared to reconsider or second-guess whether the Interim Order is in the public interest based on the same evidence.

[32] In any event, the evidence submitted on this Application reinforced our view that the Interim Order, particularly the Market-Access Bans, is necessary and in the public interest. Accordingly, the Applicants did not establish that the revocation of the Interim Order would not be prejudicial to the public interest.

3. Interference with the Account

[33] The Applicants' primary contention was that Staff interfered with GRS's ability to repurchase or redeem its securities from GRS investors, ostensibly based on a call from ASC Staff to RBC on January 9, 2023 that caused RBC to "shut down" the Account. According to the Applicants, this was contrary to the Interim Order.

[34] Staff denied that they contravened the Interim Order as alleged, or that the Account Restrictions were imposed at Staff's behest from the telephone call with RBC on January 9. Staff's evidence outlined the investigative steps taken relative to RBC and detailed all direct communications between Staff and RBC personnel. We are satisfied by that evidence that the Account Restrictions likely resulted from MF's complaint to RBC and was not in response to any request or direction from Staff investigators. While the Applicants' seemed to accept this

proposition in general, they remained critical of the ASC's investigation and of MF's apparent assertions to RBC that he was a GRS "shareholder".

[35] Regardless of whether the Account Restrictions resulted from the ASC's investigation or MF's complaint to RBC, our concern was whether an order could be made under s. 214(1) of the Act that was not prejudicial to the public interest. While we may have considered a variation to the Interim Order, the Applicants acknowledged that repaying MF (regardless of whether he is accurately characterized as a GRS "shareholder") is not precluded by the terms of the Interim Order, and that RBC would have to remove the Account Restrictions to allow this to occur.

[36] The Applicants did not adduce any evidence on what would cause RBC to remove the Account Restrictions, either temporarily or permanently. Rather, the Applicants' submission was based on Cerenzie's unsupported belief that a variation to the Interim Order might convey the message to RBC that the Applicants were not a threat to the public interest, and that might give RBC enough comfort to remove the Account Restrictions. Cerenzie provided no specificity about how the order might be varied to achieve this outcome and he acknowledged that it was uncertain whether a variation of the Interim Order "will work in that way".

[37] Staff's position – also unsupported – was that RBC was unlikely to remove the Account Restrictions if we ordered any variation of the Interim Order.

[38] Speculation alone is not sufficient to vary or revoke an order that has been made to protect the public interest. In the absence of a cogent argument, supported by reliable evidence, that an identified variation to the terms of the Interim Order would result in the removal of the Account Restrictions – and that doing so would not be prejudicial to the public interest – there is no basis to make an order under s. 214(1).

[39] Accordingly, we dismiss this ground as a basis for any relief under s. 214(1).

4. Breach of Confidentiality

[40] The Applicants' alternative argument was that certain violations of the Confidentiality Order justified a variation or revocation of the Interim Order. In addition to the Notice of Hearing being publicly available on the ASC website, the Applicants asserted that the publication of the Interim Order and the issuance of the associated News Release contravened the Confidentiality Order, and that MF violated s. 45 of the Act by disclosing the identities of certain members of the investor-relations team on a website after his investigative interview with Staff.

[41] In oral submissions, we confirmed with the Applicants that: (1) the Confidentiality Order did not preclude publication of the Interim Order or the News Release and that it was the posting of the Notice of Hearing on the ASC website and the link to that document in the News Release that was contrary to the Confidentiality Order; and (2) MF knew the identities of GRS's investor-relations team from his own email communications with them, so any public disclosure he made was not contrary to s. 45 of the Act because that information was not acquired or obtained from Staff's investigation.

[42] In the result, the sole contravention of the Confidentiality Order was the Notice of Hearing being publicly available on the ASC website for approximately two weeks. In our view, that contravention does not warrant a revocation or variation of the Interim Order, taking into account that:

- the contravention of the Confidentiality Order was wholly unrelated to grounds on which the Interim Order was made and the public interest served by the Market-Access Bans (which were consented to by the Applicants); and
- the mistaken posting of the Notice of Hearing was corrected as soon as it came to Staff's attention, and the error cannot be reversed or otherwise rectified by the revocation or variation of the Interim Order.

[43] We therefore conclude that a variation or revocation of the Interim Order based on the contravention of the Confidentiality Order would be prejudicial to the public interest.

VI. CONCLUSION

[44] For the reasons given, we dismiss the Application.

May 9, 2023

For the Commission:

"original signed by"
Tom Cotter

"original signed by"
Kari Horn