ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re GRS Hydrogen Solutions Inc., 2023 ABASC 152 **Date: 20231117**

GRS Hydrogen Solutions Inc. and Albert Cerenzie

Panel:	Tom Cotter Kari Horn
Representation:	Peter Verschoote Amanda Goodwin for Commission Staff Albert Cerenzie for the Respondents
Submissions Completed:	November 6, 2023
Decision:	November 17, 2023

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I. OVERVIEW

[1] Staff (**Staff**) of the Alberta Securities Commission (the **ASC**) have applied to extend a previously issued Interim Order (the **Interim Order**, cited as *Re GRS Hydrogen Solutions Inc.*, 2022 ABASC 167) pursuant to s. 33(4) of the *Securities Act* (Alberta) (the **Act**). The Interim Order was issued on December 16, 2022 against GRS Hydrogen Solutions Inc. (**GRS**) and Albert Eugene Cerenzie (**Cerenzie**, and together with GRS, the **Respondents**) pursuant to ss. 33 and 198 of the Act. The Interim Order will expire on December 16, 2023 unless it is extended.

[2] The Interim Order, which was consented to by the Respondents, prohibited all trading in or purchasing of GRS securities (with an exception allowing for any repurchases or redemptions of GRS securities), and directed that the Respondents must cease trading in GRS securities. The Interim Order also precluded GRS from the use of all prospectus exemptions contained in Alberta securities laws, prohibited the Respondents from engaging in investor-relations activities, and required GRS to ensure that public access to the website https://grshydrogen.com (the **GRS Website**) remained disabled.

[3] In the spring of 2023, the Respondents applied to vary or revoke the Interim Order pursuant to s. 214(1) of the Act (the **Variation Application**). That application was denied by an ASC panel, in a written decision dated May 9, 2023, cited as *Re GRS Hydrogen Solutions Inc.*, 2023 ABASC 63.

[4] Staff have since issued a Notice of Hearing dated August 25, 2023 (the **Notice of Hearing**), which alleges that GRS contravened Alberta securities laws by:

- engaging in illegal distributions contrary to s. 110(1) of the Act;
- making prohibited and misleading statements about listing GRS shares on the Toronto Stock Exchange (the **TSX**) (which we will refer to as the **TSX Statements**) contrary to ss. 92(3)(b) and 92(4.1); and
- making misleading statements about the existence of a contract between GRS and an ATCO entity (which we will refer to as the **ATCO Statements**) contrary to s. 92(4.1).

[5] The Notice of Hearing also alleges that Cerenzie authorized, permitted or acquiesced in GRS's contraventions of the Act. These allegations have not been proved and are the subject of a hearing scheduled to begin on March 18, 2024.

II. THE EXTENSION APPLICATION

[6] Staff requested that the record for this application be comprised of materials from the initial Interim Order application and the Variation Application. Staff also sought to include transcripts from a hearing management session and the set date hearing for the Notice of Hearing. The Respondents agreed that these materials, as more particularly described in Staff's Notice of Motion for this application, should form part of the record and we gave a direction to that effect.

[7] The Respondents provided written submissions dated November 3, 2023, which we agreed would also form part of the record, provided that we would not consider any statements of fact in those submissions that were not supported by evidence on the record.

[8] The relevant evidence is primarily in four affidavits – two sworn by an ASC investigator, one sworn by the ASC's Manager, Litigation, and one sworn by Cerenzie – as well as the transcripts of cross-examinations on those affidavits.

[9] After hearing from Staff counsel and from Cerenzie, who opposed Staff's application on behalf of himself and GRS, we reserved our decision. For the following reasons, we are directing that the Interim Order be extended until the proceeding initiated by the Notice of Hearing has been finally determined or otherwise concluded.

III. LAW

[10] Section 33 of the Act authorizes an ASC panel to issue an interim order for preventative and protective measures under s. 198 of the Act where the length of time required to conduct an enforcement hearing and render a decision could be prejudicial to the public interest. While an interim order is an extraordinary remedy and should not be exercised lightly, it is an important tool that allows the ASC to protect Alberta investors and the capital market where circumstances warrant. As described by an ASC panel in *Re Workum and Hennig*, 2008 ABASC 719 at para. 130, interim orders are not sanctions but are ". . . interim protective measures to forestall the continuation of *prima facie* improprieties while an investigation and hearing proceed".

[11] On an application for an interim order, Staff must generally establish, on a *prima facie* standard of proof, that Alberta securities laws have been contravened as alleged. A *prima facie* case arises where the available evidence supports the material parts of one or more of Staff's allegations and the evidence appears credible and reliable, having regard to all of the circumstances including its source, detail, and the presence or absence of any explanations or evidence that may contradict it (*Re Omega Securities Inc.*, 2017 ONSEC 42 at para. 25).

[12] Staff's extension application was brought under s. 33(4) of the Act, which authorizes an ASC panel to extend an interim order prior to its expiration so long as (a) the person or company named in the order has been provided with an opportunity to be heard, and (b) the panel considers that the length of time required to conduct a hearing and render a decision could be prejudicial to the public interest.

[13] Staff argued that it was not necessary for us to reassess whether there has been a *prima facie* breach of Alberta securities laws, because that had previously been determined when the Interim Order was issued. Staff submitted that on an extension application we are required only to determine whether the initial order remains in the public interest and whether it should therefore be extended, either for a specified period of time or until the completion of any proceeding initiated under the Act. Staff also contended that the collective evidence – adduced on the application for the Interim Order along with evidence that has since been tendered – readily demonstrates a *prima facie* case of securities law breaches by the Respondents and justifies the extension of the Interim Order until the allegations in the Notice of Hearing have been finally determined.

[14] As the Interim Order was issued in part based on the Respondents' consent to the orders sought by Staff and some of the particulars underlying Staff's misrepresentation allegations have evolved, we consider it appropriate to assess whether the evidence has established *prima facie* contraventions of Alberta securities law.

IV. ANALYSIS

[15] Some of the requisite elements for an order under s. 33(4) of the Act were not in dispute. In particular, the Interim Order has not expired and the Respondents were provided with an opportunity to be heard. Cerenzie appeared on behalf of both Respondents and had an opportunity to present evidence and make submissions in response to Staff's case.

[16] Accordingly, our focus was on whether there was a *prima facie* case that the Respondents had contravened Alberta securities laws based on the allegations described in the Notice of Hearing, and if so, whether the length of time required to conduct a hearing and render a decision could be prejudicial to the public interest.

[17] The Notice of Hearing sets out three alleged contraventions of Alberta securities laws associated with GRS's receipt of approximately $255,000 from 13 investors (including some Albertan residents). First, the Notice of Hearing alleged that GRS contravened s. 110(1) of the Act by making a distribution of securities without having filed a prospectus and without an available exemption. Second, the Notice of Hearing alleged that GRS made unauthorized, and therefore prohibited, statements contrary to s. 92(3)(b), namely that GRS's shares would be listed on the TSX, that an application had been made to list GRS's shares on the TSX, and that an application would be made to list GRS's shares on the TSX. Third, the Notice of Hearing alleged that GRS contravened s. 92(4.1) by making misleading statements – specifically the TSX Statements and the ATCO Statements – which it knew or reasonably ought to have known were materially misleading or untrue and would reasonably be expected to have a significant effect on the market price or value of GRS shares.

[18] The Notice of Hearing also alleged that Cerenzie authorized, permitted or acquiesced in GRS's alleged contraventions of Alberta securities laws.

[19] Having reviewed the evidence and submissions from the parties, we are satisfied that the evidence before us demonstrates, *prima facie*, that the Respondents contravened Alberta securities laws.

A. Illegal Distribution

[20] There was no dispute that GRS distributed shares to a limited number of investors, including Alberta residents, without a prospectus, and that GRS claimed to be exempt from the prospectus requirement because it was a private issuer that properly relied on the prospectus exemption available under s. 2.4(2)(i) of National Instrument 45-106 *Prospectus Exemptions*. Accordingly, the question was whether that exemption was available.

[21] Staff acknowledged that there was not much evidence demonstrating a *prima facie* illegal distribution, although they said that further evidence would be adduced at the merits hearing to prove the allegation. Staff did not rely on the alleged illegal distribution of securities as a ground for the Interim Order, and conceded at that time that the available evidence did not establish a *prima facie* contravention of s. 110 of the Act.

[22] We agree that there is insufficient evidence of a *prima facie* case that GRS contravened s. 110(1) of the Act.

B. Prohibited Representations

[23] We turn to the alleged prohibited representations in the Notice of Hearing. Section 92(3)(b) of the Act provides that, in the absence of written permission from the ASC's Executive Director, no person or company may, in relation to a trade in a security, make any representation to the effect that the security will be listed on any exchange, or that an application has been made or will be made to list the security on any exchange (with some exceptions where the exchange has granted approval for the listing, or consented to or otherwise indicated that it does not object to the representation). This provision is intended to protect prospective investors from representations that provide unwarranted assurances of potential future liquidity for a security as a consequence of listing the security on an exchange (*Re Smylski*, 2010 ABASC 320 at para. 84).

[24] It was accepted that GRS has not been listed on any exchange and that it did not obtain written permission from the ASC's Executive Director to make representations that GRS will be listed or will apply to list on any exchange.

[25] The evidence before us established, at least on a *prima facie* basis, that GRS authorized an investor relations group to create the GRS Website for the company to attract prospective investors. The GRS Website included an "investor relations" page that contained a statement that "GRS . . . has begun the process of a public listing on the Toronto Stock Exchange in 2022". The GRS Website also had links to several articles, some of which referred to GRS's intention of listing its shares on the TSX. One article stated that GRS "has announced its intention to go public in 2022" and "planned to list on the Toronto Stock Exchange (TSX)". Another article – entitled "GRS Hydrogen Solutions is Filing for a TSX Listing" – stated that GRS "announced its intention for listing and an IPO on Canada's Toronto Stock Exchange (TSX)", and that GRS had "already contacted the needed authorities and are in the process of compiling the required paperwork, including all accounting materials needed for its listing on Canada's premier exchange, the TSX". The article concluded with statements that "[t]he announcement of a TSX listing by GRS Hydrogen is an exciting new company [sic] that will bring a novel technology to the index" and ". . . will allow retail shareholders to invest in this novel technology that leads to a greener future".

[26] We also had evidence that at least one investor was told by someone from GRS's investor relations group that GRS would list in November 2022 and that the shares he purchased at $5/share would be worth $100/share upon a successful listing. Another prospective investor understood that the company was pursuing a listing on the TSX. Although he could not recall the exact wording from the GRS Website, this investor understood that the company "had signed documents" and "that the listing on the TSX . . . was a done deal" and not a matter of speculation. He was also told in an email communication from a member of GRS's investor relations group that GRS had ". . . a timeline for our list date . . .", although it could not be shared ". . . for legal reasons."

[27] The Respondents argued that GRS's lawyers had oral communications with representatives of the TMX Group Limited in connection with a listing on the TSX and the TSX Venture Exchange, but that no formal listing application had been submitted. Those assertions were unsupported by evidence, and they did not address the lack of written permission from the ASC's Executive Director to make representations that, *prima facie*, were contrary to the prohibitions set out in s. 92(3)(b) of the Act.

[28] Accordingly, we find on a *prima facie* basis that GRS made prohibited representations contrary to s. 92(3)(b) of the Act.

C. Misrepresentations

[29] We next address the allegations of *prima facie* contraventions of s. 92(4.1) of the Act. That provision states that no person or company shall make a statement that the person or company knows or reasonably ought to know, in any material respect and at the time and in the light of the circumstances in which it is made, is misleading or untrue – or does not state a fact that is required to be stated or that is necessary to make the statement not misleading – and would reasonably be expected to have a significant effect on the market price or value of a security. The allegations in the Notice of Hearing related to the TSX Statements and the ATCO Statements.

1. TSX Statements

[30] As mentioned, GRS indicated that its legal counsel communicated with TSX personnel about a potential listing on the TSX. Credible evidence in support of this contention might well have demonstrated that some of the statements about GRS's pursuit of a listing were not, *prima facie*, untrue or misleading. However, the impugned statements were not limited to GRS's intention of pursuing a TSX listing or that it had taken initial steps in that regard. Rather, the GRS Website referred to "[t]he announcement of a TSX listing by GRS Hydrogen . . ." that would ". . . allow retail shareholders to invest in this novel technology that leads to a greener future". Such a statement would, *prima facie*, be misleading or untrue despite any evidence of communications with TSX personnel. Other statements made to prospective GRS investors included assurances that a TSX listing was more than a mere possibility and informed at least one investor that there was an actual date for the TSX listing (although that date was not shared with the investor). The evidence was that these statements influenced investment decisions.

[31] Accordingly, the impugned statements would, at least on a *prima facie* basis, be expected to have a significant effect on the market price or value of GRS shares. We also find, on a *prima facie* basis, that GRS would reasonably be expected to know these statements were misleading or untrue and would be material to the market price or value of its shares. We therefore considered Staff to have demonstrated that some of the TSX Statements were, on a *prima facie* basis, contrary to s. 92(4.1) of the Act.

2. ATCO Statements

[32] Turning to the allegations relating to the ATCO Statements, Staff pointed to a statement on the investor relations page of the GRS Website that indicated a "key [feature]" of GRS included the existence of an 18-year contract signed "with ATCO energy company". Staff also pointed to an article linked from the GRS Website, dated July 7, 2022 and entitled "ATCO Together with GRS Hydrogen Solutions", which stated that GRS "has signed a contract with ATCO [later identified as ATCO Ltd] for 18 years". Particulars of the agreement are somewhat sparse, although the article stated that the contract "involves the use of hydrogen as a fuel for commercial vehicles" and the costs associated with the contract "could run into the millions". The article further stated that "ATCO is supplying a mixture of natural gas with 5% hydrogen by volume to a specific part of the gas distribution system", with the expectation that customers would be provided with a natural gas and hydrogen blend as early as the fall of 2022.

[33] When questioned by Staff investigators on November 1, 2022 about these statements, Cerenzie confirmed that GRS signed an 18-year contract with ATCO for the supply of natural gas and that he could provide copies of the contract. To date, the only evidence offered in support of the purported ATCO contract was a February 2022 email communication addressed to both Cerenzie and an ATCO employee in relation to certain ATCO easements in the Grande Prairie region.

[34] Staff's investigator also confirmed with an ATCO executive that they had no record of a contract with GRS, and that ATCO considered the ATCO Statements on the GRS Website to be false. ATCO subsequently acknowledged some involvement with Cerenzie in February 2022 in response to enquiries for ATCO services in the Grande Prairie area, but that Cerenzie did not follow through with an application for ATCO services.

[35] In their submissions, the Respondents contended that Staff did not understand the contract, which remains in place and was provided to Staff's lead investigator. The Respondents said that ATCO provides natural gas and does not make hydrogen or methanol, that the arrangement was an oral agreement that had been negotiated through ATCO representatives associated with First Nations projects, and that the purported contract with ATCO is through a third party, who in turn was partnered with GRS on projects located near Grande Prairie and Red Deer. The Respondents said that witnesses would be called to substantiate these assertions. To date, no such evidence has been tendered. More important, the Respondents' explanations were omitted from the impugned statements made on the GRS Website and in the linked articles.

[36] From the evidence before us, we found the ATCO Statements on the GRS Website and in the linked articles to be *prima facie* untrue or misleading by failing to state a fact that is required to be stated or that is necessary to make the statement not misleading. We also considered, on a *prima facie* basis, that the ATCO Statements were material and that GRS knew or ought to have known that the ATCO Statements were untrue or misleading in a material respect.

[37] Accordingly, we find from this evidence that, on a *prima facie* basis, the ATCO Representations were contrary to s. 92(4.1) of the Act.

D. Authorized, Permitted or Acquiesced

[38] Finally, we find on a *prima facie* basis, that Cerenzie authorized, permitted or acquiesced in GRS's alleged contraventions. Evidence established Cerenzie as GRS's "founder", sole director and president, and the majority shareholder. Although Cerenzie asserted that he did not have direct control over the GRS Website and he had not seen some of the statements posted or linked to that website, he knew that a consultant was undertaking investor relations activities on behalf of GRS, including the creation of the GRS Website for that purpose, and he provided information about GRS's activities that formed the basis for the GRS Website's content – including the GRS-related articles. It was also apparent that at least some of the impugned statements were removed and the capital raising stopped at Cerenzie's request, which corroborated his authority to direct the investor relations group and the statements made on the GRS Website.

E. Time to Conduct a Hearing

[39] Having determined that the evidence established a *prima facie* case that the Respondents contravened Alberta securities laws, it is necessary to consider whether the length of time required to conduct a hearing and render a decision could be prejudicial to the public interest.

[40] On this point, Staff pointed out that Cerenzie continues to control GRS, that he does not seem to fully appreciate or understand the alleged securities law violations and that he may repeat the ATCO Statements or the TSX Statements to investors or the general public unless the Interim Order is extended. Staff were also of the view that even if Cerenzie were no longer in control of GRS, the Interim Order should remain in place against GRS to prevent the company from raising additional funds until the allegations in the Notice of Hearing can be addressed.

[41] The Respondents maintained that they followed the advice of a law firm – that was paid considerable sums – to ensure that the capital raising was fully compliant. He also complained that the ASC's inadvertent release of confidential information undermined GRS's business operations. While we are sensitive to these complaints, they did not address the impugned statements that are, *prima facie*, contraventions of Alberta securities laws. We also explained to Cerenzie that any confidentiality breach was unrelated to the public interest underlying the need for the Interim Order.

[42] In our view, the risk of potential contraventions of the Act warrants the extension of the Interim Order until the allegations in the Notice of Hearing can be finally determined, taking into account the length of time required to conduct a hearing and render a decision on the merits of those allegations and, if Staff proves any of the allegations, to render a decision on sanction. Although the Respondents claimed that they do not anticipate raising more capital, the *prima facie* evidence of the alleged contraventions raises serious concerns that capital market misconduct may continue unless the Interim Order is extended.

V. CONCLUSION

[43] Accordingly, we have signed an Order that extends the Interim Order until the allegations in the Notice of Hearing has been finally determined or otherwise concluded.

November 17, 2023

For the Commission:

"original signed by"
Tom Cotter

"original signed by"
Kari Horn