



## **CANCELLATION OF REGISTRATION THEODOR HENNIG**

On July 30, 2009, a Discipline Tribunal found Theodor Hennig acting alone or as a representative of Company "A" guilty of unprofessional conduct in having:

1. associated himself with the 1998 financial statements of Company "A" which he knew or ought to have known were false and misleading in that the financial statements were materially misstated as a result of the recognition of:
  - a. a \$1.9 million gain on the sale of shares of Company "B" to Purchasers A and B
  - b. a \$1.9 million gain on the sale of shares of Company "B" to Purchaser C
  - c. insofar as Company "A" retained the risks and rewards of ownership of the shares.
2. associated himself with the 1999 financial statements of Company "A" which he knew or ought to have known were false and misleading in that the financial statements were materially misstated as a result of the recognition of a gain on the sale of its interest in Company "B" of \$6.2 million when Company "A" retained the risks and rewards of ownership.
3. associated himself with the 2000 financial statements of Company "A" which he knew or ought to have known were false and misleading in that the financial statements were materially misstated as a result of the recognition of a \$5.6 million gain on the sale of its interests in the Company "C" and Company "D" when Company "A" retained the risks and rewards of ownership
4. frustrated the November 1998 direction of the Alberta Stock Exchange to amend the clauses in the agreement for the sale of shares in Company "B" by advising Purchasers A and B that Company "A" would honor the terms of the original agreement notwithstanding that an amended agreement was executed in accordance with the request of the Alberta Stock Exchange.
5. misled the auditors by failing to advise the auditors
  - a) that he had advised Purchasers A and B that Company "A" would honor the terms of the original agreement notwithstanding that an amended agreement was executed in accordance with the request of the Alberta Stock Exchange and the original agreement had not been rescinded,
  - b) that with respect to the Purchaser C promissory note, the marketable securities which secured the promissory note were shares of Company "A" that had been posted by Company "A" and Theodor Hennig,
6. been ordered by the Alberta Securities Commission, on September 18, 2002 to resign any position held as a director or officer of any Alberta issuer and been prohibited from being or acting as a director or officer for a period of 15 days from September 18, 2002.



Theodor Hennig was either the VP Finance or the Chief Financial Officer of Company “A” at all material times. The purchase agreement from Purchasers A and B regarding the Company “B” shares contained a clause whereby after 24 months, Purchasers A and B had the right to sell the shares back to Company “A” for the original consideration plus a premium of 10% per annum and that they purchasers would vote in concert with Company “A” for the duration of the agreement. The Alberta Stock Exchange required the agreement be amended so that the repurchase price be based on market performance. Although a new agreement with no repurchase clause was executed, the original agreement was not rescinded. In 2000 Company “A” repurchased the shares for the original consideration plus a premium of 10% per annum.

With respect to the sale to Purchaser C, the entire purchase price was financed by a promissory note due at the end of two years. The shares purchased were subject to an escrow agreement which required the consent of the Alberta Stock Exchange. In order to give approval the Exchange required Company “A” receive the proceeds at the time of closing. GAAP required that Security be provided by Purchaser C. However, Security for the promissory note was provided by Theodor Hennig and Company “A” and the security was shares in Company “A”. As well, there was an amended agreement which provided that Purchaser C could satisfy its principal and interest obligations under the note by returning the shares to Company “A”. Purchaser C demanded repayment in 1999 and in February 2000 the Company “A” shares were repurchased consistent with amended agreement.

Following the Company “B” transactions, Theodor Hennig and the CEO of Company “A” continued in their positions with Company “B” and none of the purchasers sought representation on the Board.

The 1999 sale of Company “B” shares was financed by 48% of the outstanding shares of the purchaser plus a promissory note for approximately \$7 million. The sale was subject to the completion of a formal agreement, shareholder, regulatory and board of director approval. The transaction was not completed as the purchaser’s shares were not issued and interest or other payments were made on the note.

The 2000 recognition of the gain on sale of Company “C” and Company “D” was based upon a letter of intent whereby the purchaser would issue a promissory note for \$5.7 million and issue shares such the Company “A” would own 49% of its shares. Both parties were to obtain governmental, regulatory and shareholder and board approval. The transaction was never completed. There is no evidence the promissory note was ever signed and the shares were never issued.

Theodor Hennig did not advise the auditors that Company “A” would honor the terms of the original agreement with Purchasers A and B. Further he did not advise the auditors of the amended agreement for Purchaser C nor that the security pledged for its note did not belong to Purchaser C but had been posted by Company “A” and Theodor Hennig. The auditors gave evidence that had they been aware, they would not have supporting recognizing the gains on the sale of Company “B”.

The Alberta Securities Commission [ASC] convened a hearing to investigate allegations against Company “A”, the Chief Executive Officer and President of Company “A”, and Theodor Hennig that the consolidated financial statements for 1998, 1999 and 2000 were not in accordance with GAAP and contained misrepresentations. In 2008 the ASC concluded that Company “A” President and CEO and Theodor Hennig were responsible for misrepresentations of the



Financial statements for the years ended September 30, 1998, 1999 and 2000 and further concluded that the financial statements, specifically in respect of the reporting of gains attributed to three transactions were not prepared in compliance with GAAP. Theodor Hennig admitted that the ASC ordered him to resign as a director or officer for 15 days from September 18, 2002.

## **ORDERS**

The Tribunal ordered that the registration of Theodor Hennig be cancelled, and that:

- he pay fines of \$30,000; and
- he pay costs of the investigation, hearing and compliance with the orders in the amount of \$ 128,960.02

## **PUBLICATION**

The Tribunal further ordered that

1. notice of the Tribunal's findings and orders be provided on a named basis to all provincial institutes, the Institute of Chartered Accountants of Bermuda, and any other professional organization Theodor Hennig belongs to and the Institute is aware of, as of the date of this order;
2. notice of the Tribunal's findings and orders be provided to all provincial institutes to which Theodor Hennig applies for membership at any time following this order;
3. notice of the cancellation of registration and orders be provided to all chartered accountants by inclusion in the next general mailing from the Institute of Chartered Accountants of Alberta to chartered accountants;
4. notice of the cancellation be published to all chartered accountants by an insertion once, in the Membership Activity Report.
5. notice of the Tribunal's findings and orders be provided to any member of the public who directs an enquiry to the Institute about the discipline history of Theodor Hennig;
6. a summary of the Tribunal's findings, the nature of the conduct and any orders made as a result of the findings be published on the ICAA public website on a named basis;
7. notice of the cancellation of registration the nature of the conduct, and any orders made be published in the business section of the *Calgary Herald* and the *Globe and Mail*; and
8. the Toronto stock Exchange and Alberta Securities Commission be advised of the cancellation of the registration of Theodor Hennig.

Jude Corrin  
Discipline Tribunal Secretary  
August 28, 2009